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Preserving the American Interest

in Hong Kong After 1997

by

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<p>On 01, July, 1997, Hong Kong will revert back from British rule to Chinese sovereignty, becoming a Special Administrative Region (SAR) under the Central People's Government of the People's Republic of China. The United States and its citizens have a tremendous investment in the British colony that could be placed at risk by the change in sovereignty. This thesis reviews the development of United States' interest in the colony and defines the current interests in the colony. The retrocession developments are then examined as are the current attempts to modify the Basic Law or "mini-constitution" for Hong Kong. Alternative scenarios are suggested for post-1997 Hong Kong. The thesis is optimistic about the Hong Kong Special Administrative Region and about the United States' ability to continue its involvement in and with China, to include Hong Kong.</p>			
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ABSTRACT

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On 01 July, 1997, Hong Kong will revert from British rule back to Chinese sovereignty, becoming a Special Administrative Region (SAR) under the Central People's Government of the People's Republic of China. The return to Chinese sovereignty has caused some concern over the safety of Americans living in Hong Kong as well as for United States' businesses that have investments in the colony.

Chapter II reviews the historical development of United States' interests in Hong Kong. The current relationship is a product of long association from participation in the opium trade in China, the missionary movement attempting to spread Christianity, through World War II till the present.

The foundation of American policy in Hong Kong is the protection of United States' economic and commercial interests. Chapter III examines United States' concerns and interests in Hong Kong. According to the State Department, they are: (1) assurance of a smooth transition from British to Chinese sovereignty, (2) protection of human rights, (3) democratic development, and (4) strengthening relations between the United States and Hong Kong.

Chapter IV looks at the process of retrocession, including a review of the Joint Declaration which established the timetable for the turnover of the colony and the ambiguous Basic Law or "mini-constitution" of Hong Kong. Also examined are the attempts by Hong Kong Governor Christopher Patten to modify the Basic Law.

Chapter V suggests possible scenarios of development after 1997, including the course of American-Chinese relations. A worst and best case scenario are presented, with the most likely scenario involving a

combination of conflicting interests and cooperation between the two countries with Hong Kong flourishing as China's markets expand under its reform program.

The thesis concludes by arguing that Hong Kong no longer holds the important position it once did for the United States, that of "listening post" for China. It also suggests that Hong Kong is no longer necessary as a base of operations for American businesses interested in participating in the Chinese market. Foreign capital and technology are being welcomed directly into China, with foreign businesses setting up shop throughout the country. American companies are participating in one of the world's fastest growing economy with the full support of the government of China.

China's goal for itself and Hong Kong include stability, growth, peace, and prosperity; these are goals that should serve Hong Kong and the rest of the world quite well.

A. INTRODUCTION

On 01 July, 1997, Hong Kong will revert back from British rule to Chinese sovereignty, becoming a Special Administrative Region (SAR) under the Central People's Government of the People's Republic of China.

China was once the most advanced civilization in the world, contemporary with and larger than the Roman Empire. Albert Feuerwerker, an economic historian, states that from 1000 to 1500 AD "no comparison of agricultural productivity, industrial skill, commercial complexity, urban wealth, or standard of living (not to mention bureaucratic sophistication and cultural achievement) would place Europe on a par with the Chinese empire" (in Ropp 1990).¹ Today, however, China faces many problems. With over a billion people and a struggling but growing economy, the issue of Hong Kong has become a sensitive one for China. Never having recognized the colonial status of Hong Kong under British sovereignty, the Chinese have challenged the British claim over the years. Having been unsuccessful in their attempts to regain the territory, little thought was given by the mighty Chinese to the tiny colony.

Hong Kong has since grown in importance to China. Much of China's economic reform policies will either succeed or fail because of Hong Kong. As China makes a bid for hosting the Olympic games and continues its push for a 'Greater China', to include Taiwan, Chinese officials know the world is watching events in Hong Kong.

China has invested over \$16 billion in Hong Kong in a variety of companies, and more than forty percent of China's trade passes through Hong Kong. Ironically, the increased emphasis on market economics within China, combined with the collapse of the Soviet Union, ties the survival of the world's last, major communist system on successful integration with the dynamic economies of other Asian-Pacific countries.

Hong Kong, too, has investment in China, with two-thirds of the foreign investment in China coming from Hong Kong. There are more than

¹John King Fairbank, China A New History (Cambridge, Massachusetts, The Belknap Press of Harvard University Press, 1992), 2.

25,000 Hong Kong-backed factories in Guangdong province alone, employing three million workers. In Guangdong, Hong Kong currency not only circulates freely, but is the preferred currency. The economic prosperity of both Hong Kong and China are virtually intertwined.

This thesis begins with a review of the historical development of the United States' interest in China and Hong Kong. Americans were deeply involved in the opium trade and the opium wars which led to the ceding of Hong Kong to the British. The Opium War was less about opium and more about the conflict between Eastern and Western cultures, and the clash between conceptions of international order, economics, and legal institutions. That clash is now approaching its denouement with the retrocession of Hong Kong, and American interests are more deeply involved than ever. The Boxer Rebellion, World War II, and the post World War II period only served to tighten the historic relationship between the United States and China.

The United States' current concerns and interests in Hong Kong, as promulgated by the United States Department of State, are: (1) assuring the smooth transition from British to Chinese sovereignty, (2) protection of human rights, (3) democratic development, and (4) strengthening the relationship between the United States and Hong Kong. The underlying obligation of American policy is to safeguard the economic and commercial interest of the United States, and its citizens, in Hong Kong.

The retrocession of Hong Kong will be discussed in terms of both the Joint Declaration and the Basic Law, and the current attempts by Christopher Patten, the Governor of Hong Kong, to modify the Basic Law.

This thesis will examine procedures and events that have taken place and are expected to take place between the original Sino-British agreement of 1984 and the actual retrocession scheduled for 1997. Each basic step will be analyzed for its possible effect on United States' interests in Hong Kong. The current attempts by Christopher Patten to modify the Basic Law are by no means the end of the road. Without any pretense of forecasting the course of events, this thesis suggests alternative scenarios of development after 1997. The fate of the people of Hong Kong is at stake, as is the prosperity of China. But so far as Americans are concerned, the problem for the government of the United

States is to safeguard the interests of Americans whatever arrangements the Chinese may make for the future of the former British colony.

II. DEVELOPMENT OF THE U.S. INTEREST IN HONG KONG

In order to explore the relationship the United States currently has with Hong Kong, one must look first at the history of that relationship. American and British traders, missionaries, and naval officers were inseparably linked in the early trade and diplomacy on the China coast. It is sufficient to review the facts as described by John King Fairbank in Trade and Diplomacy on the China Coast and China, by Arthur Power Dudden, in his work, The American Pacific, and by G. B. Endacott in his informative A History of Hong Kong.

A. ROOTS IN THE OPIUM TRADE

To import opium into China in the latter days of the empire was illegal, but, in the 1800's, opium was produced in large quantities and sold at auction in India, under British auspices. It was then taken to China by private traders, both British and Indian, who had been licensed by the East India Company which governed India. The sale of opium at Guangzhou bought tea which was then sent to England; this established the third leg of the infamous India-China-England triangle trade.

Americans also participated in this opium trade with China. Visions of China's limitless markets brought American traders to Canton. Second only to the British traders in the number of ships in Canton, these new American entrepreneurs were admitted by the Chinese since they spoke the same language as the British traders. Also, they came as private individuals with no government officials to complicate processes already in place. Originally, it was the trade of furs (sea otters and beaver pelts obtained from the Indians of the northwest United States) that were traded by Americans in China. Americans soon became involved in the opium trade to take advantage of the tremendous profits that the British were realizing. The British had more of the market of the Indian opium tied up, so American traders brought Turkish opium from Smyrna into Canton. The trade from Turkey was smaller and not as profitable, but profits were substantial. Some Americans soon linked up with British in the Indian trade.

Large amounts of silver were used for commercial transactions in the opium trade. Since silver was not produced in large quantities within

China. The silver was obtained from the galleon trade with Mexico and served as the basis for the currency used by the Qing administration. Its use in the opium trade threatened the supply, so the opium problem became a fiscal problem that threatened the revenues of the government. (The silver used in opium trade may not have "drained" the country. In most cases, the silver payments were turned around and used for purchase of silk and/or tea. It may just have been a shift in the balance of trade for China, and possible hoarding, that caused the apparent shortage of silver within the country.)

In 1834, the East India Company's monopoly of British trade to China ended. A British official, a naval officer, was sent to China to oversee British trade. The presence of this foreign official concerned the Chinese government as much as the opium trade itself. Lord Napier arrived as chief superintendent of British trade in China, three months after the Company's charter had expired. British trade stopped three weeks after his arrival. He was ordered to administer British law, but the Chinese had not given permission for this. Since Napier had limited authority outside Canton, it was only a matter of time before conflicts occurred.

The system of trade that had been in place between the Westerners and the Chinese, the Guangzhou system, had the East India Company dealing with brokers called Hong merchants (a member of the authorized Cantonese merchant guild) who handled trade ship-by-ship and collected duty payments and fees. With the end of the monopoly by the East India Company, British private traders continued to export teas and silks as well as to import opium. Lord Napier demanded to deal with Qing officials in terms of diplomatic equality rather than deal like a trader with the Hong merchants. This went against the tribute system that was in place in China. If Britain's diplomatic equality was recognized, the concept that the Chinese emperor was superior to all other rulers would be destroyed, and it was this system that rationalized the emperor's position in power in China. If the opium trade was allowed to continue, the problem of silver depletion would shake the foundation of the government of China.

Besides the trade in opium, American traders supplied grain, cheese, rum, ironware. These products were not sufficient to pay for the teas, cotton, silk, lacquerware, and porcelain that the Chinese had, unless, augmented with kegs of Mexican silver. For the American traders, this

meant they had to use their surplus profits of trade with the West Indies and with Europe in order to compete with other Western traders in China. Large amount of money went to supplement the trade with China until American merchants started to follow "chain routes" buying a variety of goods enroute to China in order to increase the value of the cargo that arrived in Canton.

As far as the use of opium, it had become quite a problem in China. Often compared to the drug problem America is experiencing today, the opium trade in China grew up in situations of demoralization often destroying both the individual smoker and his family. Additionally, the price of the drug often led to violence and corruption between the smugglers and officials. All this in order to provide profits to the British Empire and other Western powers.

Chinese officials were uncertain about what course of action to take. Could they destroy the Chinese smugglers and embargo British trade? (The British now had new steam gunboats that could be used to influence the situation.) There was even talk of legalizing opium since the illegal traffic could not be stopped. But in 1839, Daoguang Emperor Imperial Commissioner, Lin Zexu, decided to compel the foreign traders to stop bringing in the opium. The Chinese opium smugglers in Guangzhou were suppressed. The Western traders barricaded themselves in their factories. Finally, they had to surrender their stocks of opium. (It was know by those foreign traders that more opium was already on its way and that losses, at least for the British traders, would probably be covered by the British government.)

It was Commissioner Lin's actions that precipitated the opium war. The Westerners' war aims and strategy were worked out by Dr. William Jardine and Lord Palmerston in London. The Jardine Trading Company leased vessels to the British fleet and lent pilots, as well as translators, to the British expeditionary force. New paddle-wheel steamers were sent to Guangzhou and then up the coast in order to "secure privileges of general commercial and diplomatic intercourse on a Western basis of

equality, and not especially to aid the expansion of the opium trade."¹ Battles were fought along the southeast coast of China. The British won the Opium War of 1839-1842. The Qing agreement to the Treaty of Nanking came in August of 1842. The Treaty of Nanking provided for: extraterritoriality, an indemnity, a moderate tariff and direct foreign contact with customs collectors, most favored-nation status, freedom to trade with all. Additionally, it designated places for trade, or treaty ports. For purposed of this thesis, the important stipulation of the Nanking Treaty was the cession of the island of Hong Kong. After 1854, Hong Kong became the center of all British trade with China.

The United States government debated its China policy or lack of one when word of the Treaty of Nanking reached home. Commodore Lawrence Kearney, United States Navy, Commander of the East India Squadron opened representations to the imperial commission at Canton. He stopped short of negotiating any agreement due to his lack of authorization. "Americans had to reassert their basis of equality commercially with the British and other countries in China. Accordingly, Congressman Caleb Cushing of Massachusetts arrived in Macao on February 24, 1844, sent there by President John Tyler as the first United States Commissioner. On July 3, at Wangshia close by, assisted by American missionaries Dr. Peter Parker, Elijah C. Bridgman, and Samuel Wells Williams, Cushing signed a treaty of amity and commerce to open diplomatic relations with China."²

The provisions of the Treaty of Wangshia were: (1) freedom to trade with China and agreement to abide by China's trade regulations, (2) equal treatment of Americans and other countries for commercial and political privileges, and (3) promise by the United States that it sought no territorial gains in China and would not use force to gain advantages from China. Special provisions also permitted American to hire Chinese as teachers and to purchase books recommended by the missionary advisors. (Besides China signing a treaty with the United States, China also signed a

¹John King Fairbank, China A New History, (Cambridge, Massachusetts: Belknap Press of Harvard University Press, 1992), 200.

²Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 7.

treaty with France in 1844.) Most important of all, it paved the way for Americans to enjoy most favored nations treatment with the British and everyone else in developing the China market.

This survey of the famous Anglo-Chinese conflict of the period 1839-42 suggests that the Chinese officials were far removed, in their thinking, from the economic realities which they faced, whereas the representatives of Britain's economic expansion, particularly the pioneer opium merchants, know clearly what they wanted and how to get it. It was soon to appear that the British officials on their part, as has been true more recently in the course of Sino-Western relations, were confident that they could win military victories in China, but were less certain how to capitalize upon them. Once the fighting stopped, they found themselves in a diplomatic contest which was more evenly balanced.¹

With the Treaty of Nanking, the encroachment into China by foreign powers began. The Qing government gave the island of Hong Kong to the British (one quarter of the Nanking Treaty document was about Hong Kong: articles XIII through XVI and part of XVII) and opened the first five treaty ports (Canton, Amoy, Foochow, Ningpo, and Shanghai) with this document.

Palmerston had demanded the island as "a place of residence and of commerce." . . . In 1842, Pottinger had inherited Hong Kong as a base of operations. British merchants had begun building there without waiting for the confirmation of British sovereignty. But Palmerston's successor as foreign secretary, Lord Aberdeen, did not regard the island "in the light of a permanent conquest," foreseeing that its possession would be "attended with great and certain expense," and involve political complications with the Chinese. In obtaining it at Nanking, Pottinger was therefore obliged to exceed his instructions. His original demand there had been for the cession of Hong Kong "as an atonement for the insult offered (at Canton) to Her Majesty's Crown and Dignity." To save the emperor's face this was changed in the treaty to the euphemistic explanation that

¹John King Fairbank, Trade and Diplomacy on the China Coast The opening of the Treaty ports, 1842-1854, (Stanford, California: Stanford University Press, 1969), 83.

British merchants needed some port "whereat they may careen and refit their ships, when required and keep stores for that purpose...¹

Pottinger, as Hong Kong's first governor, was instructed to make it a free port and to raise revenues by leasing the crown's land. Additionally, a duty was to be levied on such items as wines, spirits, opium, and tobacco in order to raise revenues. The colony was expected to be self-supporting. The merchants welcomed Hong Kong as a protective stronghold. Warehouses in the colony could store goods. During the war, many had envisioned the colony as a commercial center for the future. Issues such as the control of Chinese residents in Hong Kong were worked out just like issues of trade in discussions with the Chinese.

The British were able to change the position the Chinese held in these discussions at Nanking; the Chinese negotiators had endorsed the idea of the Chinese population of Hong Kong being governed by Chinese law that would be administered by a subdistrict magistrate stationed at Kowloon. The British negotiator agreed, in principle, but would later argue that the British authorities in Hong Kong must have jurisdiction over the Chinese residents of Hong Kong in order to keep the peace. The Chinese eventually accepted the British approach (considered by many a reciprocal extraterritoriality): the British government felt that this arrangement would weaken the enforcement of the British law in Hong Kong, so London countermanded the plan. The Chinese were notified that London's position was that Hong Kong had been ceded, and therefore, its residents were no longer under the jurisdiction of China. The Chinese, on the other hand, felt that the treaty referred to the cession of the land for use by the British; the Chinese did not believe Hong Kong's inhabitants were to become subjects of the British. London's decision was final. In April 1844, a Chinese magistrate was stationed at Kowloon to cooperate with the Hong Kong magistrates in dealing with the Chinese coming from the Chinese mainland. (It was not until the end of 1844 that a written

¹John King Fairbank, Trade and Diplomacy on the China Coast The opening of the Treaty ports, 1842-1854, (Stanford, California: Stanford University Press, 1969), 123.

acknowledgment of British sovereignty over the island and people of Hong Kong was obtained from the Chinese.)

It was widely known that the principles of the Treaty of Nanking were never fully accepted by the Chinese; and the British were not yet satisfied. A second war, beginning in 1856, would occur between the Chinese and the British and the French. A second treaty, in 1858, was secured at Tianjin and opened more ports to the Western powers. In 1858, China would sign treaties with Britain, the United States, France, and Russia as equal sovereign powers; China would sign these treaties against her will.

The original treaty signed by China with Great Britain had identified five treaty ports to be used by Western traders; this would eventually expand to more than eighty. These treaty ports were under the supervision of Chinese compradors or foreign-hired business managers who would manage the affairs beneath the overlordship of the taipans or firm managers. The treaty ports were built on the out skirts of Chinese cities. The British consulates were located there as were clubs, race courses, and churches. The British consul and officials of other nations ruled these treaty ports. There were gunboats in the vicinity to enforce rule and protect foreign assets. And at Guangzhou, Xiamen and Fuzhou the island location provided even more protection for the foreigners. In other treaty ports, rivers, canals, creeks and waterways often created barriers to the areas occupied by the foreigners.

These areas were rooted in Western culture but were also influenced by the Chinese culture since assistance by Chinese was needed by the foreigners in business and everyday life. Under extraterritoriality, the Westerners were answerable only to foreign laws and not to those of the Chinese; the foreign traders required their own law of contract to do business.

The treaty tariff was an important aspect of the treaty port system. The Chinese customs collectors lacked the authority and means to influence the foreigners, so, foreign inspectors were appointed by the Chinese to run the customhouse at Shanghai in 1854. This feature of the treaty system allowed equality of competition and provided a badly needed revenue for the Chinese government.

As previously mentioned, the most favored nation clause was the most important aspect of the treaties to the United States; it allowed all foreign powers, including the United States, to share privileges given out by the Chinese government. The Qing dynasty continued to loose ground as the fortunes of the foreigners grew. The domestic opium trade, a foreign-Sino venture, eventually replaced the importation of India opium. The India to China opium trade had existed for more than a century, known as the "treaty century"; the importance of opium to Britain's foreign trade and expansion can not be understated.

After renewed hostilities in 1859, a third war was fought. In 1860, an expedition of British and French troops occupied Beijing in order to convince the Qing of Western determination. The Emperor's summer palace was burned. The British annexed Kowloon peninsula and Stonecutters Island with the Convention of Peking in 1860. American traders took advantage of these newly won privileges as did other Western traders. The United States by this time was a full partner in the system of unequal treaties, which Chinese nationalist of future days would resent so bitterly. Yet for years to come Americans "assumed self-righteously that the Chinese favored them over Europeans because the United States government had not won their privileges by using armed force."¹

The United States would be deeply involved in another aspect of the intrusion into China by Western powers; the missionary movement was beginning to grow and expand as more and more missionaries came to China to spread Western ways and to convert the Chinese to Christianity. This movement developed apart from the trade by American traders; it was even at odds with the trade when it came to dealing in opium. During the opium wars, the missionaries were often the news link to the United States reporting home their observations, convictions, and their frustrations at the unwillingness of the Chinese to adopt Western ways. This connection with China would play an important role in the long term relationship between the United States and China.

¹Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 8.

In 1851, the Taiping Rebellion was the classic linkage of Christian sectarianism with the peasant uprising within China. Hung Hsui-ch'uan was the Taiping's prophet; he taught gospel of the Old Testament based on Protestant Christianity (and a brotherhood of revolutionary nationalism and egalitarianism). He became a militant evangelist and called for action by the peasants of China; this resulted in a civil war against the Manchu overlords. Foreign legions were sponsored by the rich merchants of Shanghai; these troops were led by Frederick T. Ward from Salem, Massachusetts. Ward earned the title "Ever-Victorious Army" from the emperor after successfully suppressing the rebellion. After Ward died of wounds received in battle, another American took over the foreign legions; Henry A. Burgevine took command and took forty thousand silver dollars for his personal use; he was relieved by a British officer, Charles George "Chinese" Gordon.

The Taipings were against gambling, opium, tobacco, idolatry, adultery, prostitution, and footbinding. They advocated increased status for women and used them in the army and to run the palaces. They outlawed footbinding. The examination system, which had caused many problems and helped bring on the rebellion, was changed not improved under the Taiping. The idea of communal living and the grouping of twenty-five families, with a common treasurer, never spread throughout the countryside. The terrible result of the rebellion was the slaughter of much of the populace and a tremendous amount of destruction throughout China; a bad name was given to Christianity in the process.

For assistance in putting down the rebellion, the Manchu court gave additional privileges to the British and the French and opened more ports to Western traders. The American traders took advantage of gains made again by the French and the British and, once again, piggybacked on the exploitation of China.

American trade progressed in China. Furs and products from whaling in the Pacific (to be used for domestic consumption) brought more and more people into the business of trade. The route to China favored by traders was from the Atlantic Ocean, southeast around Africa's Cape of Good Hope, into the Indian Ocean, then to the West and then north to Canton. The fur traders preferred the route around South America to obtain their furs or along the northwest coast of North America, from

California to Oregon, and on to Nootka Sound of Vancouver Island or to Russia's subarctic Alaskan and Aleutian islands. All voyages destined for China were extremely long and very dangerous. All this changed with the advent of steam; the long voyage around the cape was abandoned for the direct route across the Pacific.

New commodities were continuously sought for trade with China. Items such as: sandalwood, tortoise shell, pearls, and pearl shell came from Polynesia and Melanesia, Australia, Fiji, and New Zealand. Birds' nests came from Indonesia and the western Caroline Islands. Trade influenced expansionism as the British, French, and Germans took one group of island after another. The United States concentrated on the Hawaiian Islands. Much of the development and exploitation of the Pacific can be attributed to China trade.

The Chinese struggled to make the old system of government work by adopting Western ways. Their aim was peace through diplomacy and accommodation, but self-strengthening was their long-term defensive plan. Somehow, China planned to survive the internal turmoil and the foreign invasion. So, in an effort to deal with the problems of the outside world, the imperial court established the Office for General Management which was to consolidate foreign affairs. There were five bureaus: Russian, British, French, American and one for Coastal Defense. Additionally, two agencies were attached to the Office for General Management: the Inspectorate-general of Customs and the College of Foreign Languages.

In the spring of 1861, the United States, under President Abraham Lincoln faced civil war. The Secretary of State, William H. Seward, who had visions of the United States playing a major role in the trade with Asia, was forced to put aside those dreams and concentrate on gaining international support for the Union in its war against the Confederate South. Anson Burlingame was dispatched to China as minister representing the United States; he had instructions to cooperate with the European powers there. Seven years later, as Burlingame was retired from his position as minister, Prince Kung of China appointed him to a mission to discourage Europeans and Americans from pressing the modernization of China. Burlingame said, "When the oldest nation in the world, containing one-third of the human race seeks, for the first time, to come

into relations with the West, and requests the youngest nation, through its representative, to act as the medium of such change, the mission is not one to be solicited or rejected."¹ Burlingame was the first outspoken American for reciprocity rights for all Chinese.

Burlingame arrived in California with a Manchu and a Chinese, as co-enchovy, and proceeded on to New York City. When Burlingame met with President Andrew Johnson, in 1868, a treaty was signed that committed the United States to noninterference in Chinese affair. The treaty made provisions for the entry of Chinese consuls and laborers into the United States; it made provisions for reciprocal rights for Americans in China. Peking, although not consulted, was pleased with the provisions of the treaty and in the treaties signed with the British, French, Germans, and Russians. Chinese student exchanges began in conjunction with the treaty; this educational exchange began a new influence of the Chinese by the United States.

China's self-strengthening movement was having major problems. Mandarins were upset with the merchants and the industrialists; scholars were directing undercover operations for the government. Christian and Confucian ideology clashed. A campaign against American missionaries broke out. Challenges to accepted customs were occurring everywhere. Christian converts showed no tolerance for traditional beliefs. The Chinese economy was suffering as Westerners were competing for concessions and carving up the empire.

In order to protect their interests in Hong Kong, the British leased the New Territories for a period of 99 years dating from 1 July 1898. The new area formed a "rectangle extending from a line joining Deep Bay and Mirs Bay in the north, to Lamma Island in the south, and added some 355 square miles to the colony."² This was a distinct gain for the British, but it also benefitted the Americans who were glad to have access to the godowns and warehouses on the mainland side of Hong Kong harbor.

¹Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 117.

²G. B. Endacott, A History of Hong Kong, (London: Oxford University Press, Amen House, 1964) p. 262.

On September 6, 1899, after American businessmen appealed to the United States government for assistance, Secretary of State John Hay, in a series of Open Door notes, asked Japan, Russia, Germany, Great Britain, France, and Italy to support a policy of equal trade for all nations within their spheres of influence that had grown up in the neighborhood of the treaty ports. Americans were not outraged by the impending break up of China. All they wanted was equality of conceived opportunity.

B. THE BOXER REBELLION

In 1898, the anti-foreign anger in China was focused on the Christian missionaries and their converts. Flooding from the Yellow River and droughts in the northern part of China added to the frustration of the Chinese. These conditions led to the so called Boxer Rebellion. The Society of Righteous and Harmonious Fists was a clandestine organization from which the movement arose. Members practiced a kind of Chinese boxing to prepare physically and spiritually for combat, Hence, the name "boxer". The goals of the rebellion were both political and religious; anti-foreign and anti-Christian feelings were conveyed during the movement. The Empress Dowager Tz'u-hsi supported the Boxers, and a majority of the members of the Army became Boxers. As the movement grew and support widened, foreign residents in Peking feared for their lives and a multinational force of armed guards was organized from the ships offshore. The Boxers met the force on the road to Peking.

In June through August of 1900, the Boxers ravaged the northern countryside of China. Christian missionaries and their converts were killed. A Japanese diplomat and the German Ambassador were also killed.

From the United States, orders from the President made twenty-five hundred troops stationed in the Philippines available to combat the situation. All told, over 15,500 soldiers, sailors, and marines of eight different nations were brought together to end the bloodshed. Russia sent about two hundred thousand more soldiers into Manchuria for suppression of the Boxers. The actions by Russia upset the Japanese because of the numbers of troops used and the delay in removing the troops from the area afterwards. United States Secretary of State, John Hay, sent out a second Open Door note of July 3, 1900, without notifying China or the other nations involved in the situation. Hays wrote, "the policy of the

Government of the United States is to seek a solution, which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire."¹

Hays defined "the three pedestals of United States policy: (1) the protection of American lives and property, (2) the opportunity for open and impartial trading, and (3) the preservation of China."² It was his intention to preserve China and to continue the open door trading policy. The Boxers were defeated, first at Tientsin, and then in Peking. President McKinley countermanded the orders he had originally given; the ten-thousand-man American force would not be assigned to China and two-thirds of the troops already in China would go to the Philippines. The United States stood ready with troops to protect access to Peking. The number of American troops assigned in China (with backups in the Philippines) grew; also assigned duty in China: one battleship, two cruisers, and numerous gunboats to patrol the coast and inland water ways. The interests of civilization and trade were the justifications given for the show of force by the United States. From this time on, Manila was far more important than Hong Kong to market oriented Americans.

The Protocol of 1901, which assigned financial responsibilities of the Boxer Rebellion to the Chinese government, put the damages at \$333 million. Foreign troops were allowed to stay in Peking and to be stationed at locations between the city and the coast. (The United States even requested a parcel of land for a naval coaling station until reminded that this went against the Open Door policy.) The Open Door policy was given more consideration by all parties after that. Fearing conflict, the foreign powers did not partition China. It is important to remember that the Open Door policy received much support from within the United States, but the

¹Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 113.

²Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 120.

reality was that the policy was unenforceable. The Boxer Rebellion of 1900 was interpreted by the Chinese as just another example of the exploitation of China by Western powers.

It was not long before there were more problems within China; the country was being run by foreign ambassadors and Chinese territory was being used by foreign powers for their imperial wars.

The situation with the foreign powers continued to cause internal problems for China. In 1906, because of his dealings with Japan and the termination of the Russo-Japanese War in the Treaty of Portsmouth, President Theodore Roosevelt won the Nobel Peace Prize; he wrote, "our future history will be more determined by our position on the Pacific facing China, than by our position on the Atlantic facing Europe."

The relationship between the United States and China continued to sour; Americans were denounced for their role in the Boxer Rebellion. The Immigration Act of 1904 was felt to be racist in that it barred more Chinese from being admitted to the United States or its territories. In response, American goods were boycotted in China and an American railroad franchise was canceled. Some positive results were achieved in the rocky relationship of the United States and China: in 1908, the United States Congress allocated \$12 million (approximately half of the American share of the Boxer indemnity) towards a government program for the training of Chinese in America. A preparatory school was set up at Qinghua College in Beijing. (By 1929, twelve hundred and sixty-eight students had been sent to the United States.) In 1924, the remaining half of the indemnity, was allocated to the support of the China foundation; this foundation gave grants for research and training.

In 1907, Japan and Russia had secretly divided Manchuria between themselves. Japan recognized Russia's interest in Outer Mongolia and Russia accepted Japan's control of Korea. Japan annexed Korea that same year. The United States did not protest either of these two events. President Roosevelt did not take any steps regarding Manchuria so as not to cause the Japanese to feel that the United States was hostile to them.

The new American President, Taft, reversed the timid position taken by Roosevelt. With a strong endorsement of the Open Door policy and Chinese nationalism, and a new "dollar diplomacy" approach (substituting dollars for bullets), the United States involved itself again in affairs of

China. America became involved in the consortium of bankers that was to finance railroad construction in China. The revolution in China, 1911, was started, in part, because of this continued foreign interference.

Sun Yat-sen organized the Revive China Society to overthrow the Manchus, to regain China for the Chinese, and to institute a republican government. Sun traveled internationally in order to drum up support for his cause; he was in the United States when the Qing dynasty collapsed (the empress dowager died) in October of 1911. Sun was made President of the Republic of China on January 1, 1912; Sun resigned in favor of Yuan Shih-kai, the imperial army commander-in-chief, when Emperor P'u Yi, the last Emperor, abdicated on February 12, 1912.

The American missionaries, who continued to have a great influence in the United States on policy toward China, supported Yuan and the Republic of China after Yuan promised to tolerate Christianity. Yuan even approached the United States for financial assistance. Diplomatic recognition of the new republic was withheld by Great Britain, France, Germany and the United States in an attempt to gain further concessions from China.

But in March 1913, when Woodrow Wilson was inaugurated, he expressed opposition to the infringements being made on China; the United States canceled its participation in the banking consortium. President Wilson reversed policies approved by both Roosevelt and Taft and went back to the "Open Door" policy. Wilson granted full diplomatic recognition to China on May 21, 1913.

Within a month, civil war had broken out in China between the forces of President Yuan and the Kuomintang. Regional leaders were to take leadership roles in their regions; there was no conversion to nationalism. Regional units broke away from the national army. Yuan made himself emperor. Sun Yat-sen led the opposition. Yuan Shih-kai died in June of 1916, and with that, the age of the warlord was born in China.

Japan, supported a modern, nationalistic China, and supplied much needed capital when the United States pulled out of the banking consortium. In August of 1914, when war broke out in Europe, the focus of Japan changed and war was declared on Germany. Japanese forces overran German holdings in Tsingtao, Kiaochow Bay, and on the south coast of Shantung Peninsula. The Japanese occupied German colonies in the

Marshall Islands, the Carolines, the Marianas, and in Palau. Twenty-one Demands were presented to the President of China by the Japanese. The demands were divided into five categories: "(1) recognize Japan's special interest in Shantung; (2) yield to Japan's demands for Inner Mongolia and Manchuria; (3) accept joint Sino-Japanese operation of China's iron and steel industries; (4) promise not to cede any coastal area to another foreign power; and (5) allow Japan to control the vital elements of China's internal administration including police, military, and economic affairs."¹ The Chinese made the demands public in order to embarrass the Japanese; the fifth category was withdrawn by the Japanese. The Chinese were forced to concede points on the other four demands. The Chinese people were insulted by the demands; Japanese goods were boycotted. No outside powers came to the defense of the Chinese.

It is to be noted throughout this story, the United States had no particular interest in Hong Kong or the British trade. The American concern was for the entire China market. The center of American interest was Beijing, or better, Beijing and Shanghai. Furthermore, foreign trade of any kind was not all that important to a youthful and growing American of the early twentieth century. It was only after America became a global power, possibly beginning with World War I, that an entirely new global outlook entered the American psyche.

In April 1917 the United States entered the war against Germany. China also declared war against Germany. The Secretary of State, now Robert Lansing, conceded Japan's special interest in China, and in return, Japan pledged support for the United States' Open Door policy and China's territorial integrity. President Wilson then revived the international banking consortium plans for development of China. For Japan's support of the plan, the agreement was made to stay out of Manchuria.

By 1916, China had split into regions dominated by warlords. The warlords were sucking the life out of China with high taxes, intimidation, inflation of the currency and neglect of the infrastructure, along with, the

¹Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 125.

revival of the use of opium. Patriotic feelings arose in China as a result of the Japanese injustices. The Chinese felt betrayed by the United States, and on May 4, 1919, students displayed their displeasure. Mao Zedong verbally attacked the United States and President Wilson for failure to support China's territorial integrity. A movement had started with the May Fourth uprising: the New Culture Movement.

The Americans were placed in a difficult position; they wanted to share with the British all the commercial privileges the British extracted from China. American officials generally sided with the Westerners desire for law and order. To a certain extent, Hong Kong was a model colony. On the other hand, American liberals, particularly the missionaries, sympathized with the Chinese struggle against the unequal treaties. Those Americans had no sympathy for Hong Kong which they regarded as the symbol of crass materialism in Eastern Asia.

President Harding set up a conference in Washington to discuss the problems of internationalism and arms reduction. The Washington Conference (1921-1922) was very successful and produced a number of treaties. The Five-Power Treaty established naval limitations in order to avoid a race for a naval buildup in the Pacific. The Four-Power Treaty was an agreement with Japan to respect possessions in the Pacific and bring to an end the old Anglo-Japanese alliance. The Nine-Power Treaty sought to guarantee the sovereignty, independence, and territorial integrity of China. As a result of the conference, Japan withdrew from areas in Asia with the exception of Korea and Manchuria.

Problems continued within China. In order to protect American interests within China, the United States stationed soldiers and marines in country; American gunboats patrolled the rivers. Americans felt no obligation to protect Hong Kong. When Chinese attempted to take control of foreign run custom houses, American warships intervened. Needless to say, the Chinese were disappointed with the American response. Many Chinese began to look toward the Soviet Union for support. When Sun Yat-sen died in 1925, violence occurred, much directed toward Americans, to include the Christian missionaries.

The May 30 Movement (1926) forced the United States to take a new look at China relations. British interests and American interests were drifting farther apart. After the death of Sun Yat-sen, a power struggle

within China began. Chiang Kai-shek took control of the nationalists' forces and won control of the Kuomintang party and government; Mao Zedong was the leader of the Communist forces. The struggle began. American forces stationed themselves between Shanghai and Nanking in order to defend American interest. American support was behind Chiang Kai-shek. British and American interests moved closer together. Americans sided with the British and Chiang Kai-shek in opposition of the Russians and the Communist. All this changed in 1931 when the Japanese moved into Manchuria. A series of events took place which linked Japan and Germany as fascist aggressors against the British and Americans; ultimately, Russia would join the same side. Eventually Hong Kong, Shanghai and many Chinese cities would become friendly bastions of the free world. They were smashed in World War II only to be reestablished after long years of recovery after World War II, and the coming and passing of the Cold War.

The main problem in the country continued to be with the poor who were virtually being ignored by the government. The peasants were not being ignored by the Communist party, however; they were schooled in guerrilla warfare and recruited for the Communist struggle.

Manchuria became the focus of interest within China when the Japanese captured Mukden. The United States responded with the "Stimson Doctrine"; the United States was not recognizing any changes in the treaty rights of Japan in China, nor violations of the Open Door policy. The Japanese then entered Shanghai and withdrew from the League of Nations.

President Franklin D. Roosevelt, in 1933, began a program of naval construction in hopes of pressuring Japan; Japan responded with a naval buildup of its own. In July 1937, the Second Sino-Japanese War broke out. Peking was not damaged, but Shanghai was bombed by the Japanese. Next came the "rape of Nanking", the fall of Canton, and the fall of Wuhan. By 1938, all major Chinese cities were controlled by the Japanese.

The Communists declared war on the Japanese when Manchuria was seized. In 1937, a united effort of the Communists and Nationalists was unable to beat the Japanese but convinced Americans that the internal situation in China had improved.

The Japanese attacked American assets in the drive to control China. An attack on the American vessel, the Panay, enraged Roosevelt; a full

apology and indemnity were demanded and received. Americans provided some financial assistance and technical assistance to the Chinese in their efforts to fight Japan. Japan's naval forces continued to grow and a "New Order" was proclaimed by Japan for the Orient. (The attack on Pearl Harbor was just two years away.)

The Japanese felt that their aggression in China would not bring the Americans into a conflict. Their moves toward Southeast Asia, for raw materials, commercial strongholds, and defensive post, were another story. With the world watching the war in Europe, Japan eyed French Indochina. The French government was dominated by the Germans at this point and was unable to deal with the Japanese; the Japanese were granted permission to use airfields in French Indochina. The United States was the only country in a position to stop the Japanese in the Pacific and took steps to stop the Japanese. First, there was an embargo against Japan on aviation fuel and high quality scrap iron. After the Tripartite Pact (Japan, Italy, Germany pledging total assistance to each other) was signed, the embargo was expanded to include all scrap iron.

In a show of support for both Great Britain and Japan, the United States announced its intention to terminate the Commercial Treaty of 1911 with Japan. When Japan moved into southern Indochina, President Roosevelt imposed an economic blockade by freezing all Japanese assets in the United States. At that point, all petroleum exports to Japan were stopped. Diplomacy provided no hope in resolving the problems between the two countries. The Japanese did propose a conference between the United States and Japan be held.

Japan proposed abolishing the Tripartite Pact and promised neutrality for Southeast Asia so long as Japan could obtain resources there. Japan also demanded normalization of trade, including petroleum, and the end of aid to China from the United States. Japan refused to pull out of Indochina until peace was reached in China (on Japan's terms), and Japan required recognition by the United States on Japanese sovereignty in Manchukuo (Manchuria) and as well as rule of China.

Diplomatic efforts continued, but the embargo on petroleum set the Japanese on a course of war with the United States. On November 26, 1941, the United States rejected the Japanese plan. On December 7, 1941, the Japanese forces attacked Pearl Harbor. In all this, Hong Kong was not

a major player. It was recognized that Hong Kong was the center of British interests in the area, but it was also taken for granted that the United States would act as a protector for Hong Kong while the British homeland was suffering at the hands of the Nazis.

C. WORLD WAR II

The British forces in Hong Kong were not strong enough to defend the entire colony against a Japanese invasion. The British plan: to deny use of the harbor to the enemy. Major-General Maltby, the British Commander, felt, with reinforcements, he could defend part of the mainland as well as the island. Troops were in place by December 7, 1941, and Hong Kong was attacked on the morning of the 8th of December. The Japanese crossed the river at Lowu and dive-bombed Kai Tak aerodrome.

Since the British troops were without an air force and lacked an air defense capability, the Japanese moved rapidly in their attack. The British withdrew to their defense line. When the most important defense post was captured, the order was given to withdraw to the island. The British troops crossed at Lyemun from a bridgehead at Devil's Peak. On the 18th of December, the Japanese landed on the island between Lyemun and North Point; the Japanese plan: to cut the colonies defense into two by an advance to Repulse Bay on the south and by way of Wong Nei Chong Gap. On Christmas Day, the British resistance ended and the Japanese held Hong Kong. The Americans were in no position to give effective support to the British; they had their own problems in Manila.

The Europeans were interned at Stanley for the period of the occupation: three years and eight months. The Chinese population was reduced by one-third. General deterioration of public services within Hong Kong such as roads, health services, and malaria control all occurred during the Japanese occupation.

The subject of British control of Hong Kong after the war was being challenged even prior to the end of the war. The United States Secretary of the Treasury, Morgenthau, in November 1941, proposed the United States try to encourage the British to sell Hong Kong to the Chinese. "In the discussions over the Atlantic Charter in March 1943, Roosevelt felt that clause 3 in the charter, urging the liberation of all peoples, applied as much to those of the British colonies as to those peoples overrun by the

Germans and Japanese, and the President ". . . once or twice urged the British to give up Hong Kong as a gesture of good will...¹ " The Dutch were similarly pressed to grant independence to the Dutch East Indies."² Roosevelt, Churchill and Stalin discussed the future of Hong Kong at the Yalta Conference in February of 1945.

The American President was so anxious to secure Russian help in the Pacific War that he was willing to grant concessions to Russia at the expense of both Japan and China; and at the same time, as part of the general Far Eastern settlement, he urged in private conversations with Stalin that Hong Kong should be given back to the Chinese or internationalized as a free port. Churchill was excluded from that part of the negotiations relating to the Far East - as was the Chinese representative - and we are told he 'exploded' at a resolution on the subject of trusteeship which he thought questioned the British control over her colonies.³

As planning for the end of the war continued and the discussions focused on the administration of the territories recovered from enemy occupation, the policy to be followed by the Allied Combined Civil Affairs Committee was to be laid down by the government which had authority over the area before the enemy occupation. In the case of Hong Kong, the British were to set up a temporary military administration of Hong Kong upon recovery of the territory. A planning committee that had been set up

¹G. B. Endacott, A History of Hong Kong, (London: Oxford University Press, Amen House, 1964) p.301. This includes a reference to R. E. Sherwood, The White House Paper of Harry L. Hopkins, London, 1948, pp. 718-719.

²G. B. Endacott, A History of Hong Kong, (London: Oxford University Press, Amen House, 1964) p.301. This includes a reference to E. Roosevelt, As He Saw It, pp. 223-224.

³G. B. Endacott, A History of Hong Kong, (London: Oxford University Press, Amen House, 1964) p.301. This includes a reference to R. E. Sherwood, The White House Paper of Harry L. Hopkins, London, 1948, p. 854.

by the Colonial Office and War Office to study the resumption of British authority in Hong Kong was to serve as the British Civil Affairs Unit.

As the United States continued to fight World War II, the focus on the struggle within China was lost to events throughout Southeast Asia and the rest of the world. But the struggle still continued with American assistance. United States Army General Joseph Stilwell organized the Air Transport Command to deliver supplies to China from Assam in India; Chinese troops were flown out of China to train. In October of 1943, a multinational force, to include some Chinese military, went into Burma to break the Japanese blockade of China.

General Stilwell opened the Ledo Road in the Yunnan Province of China; this offensive in China was followed by a Japanese counteroffensive: the Japanese seized some of the airfields used by Stilwell and threatened Chiang Kai-shek's capital in Chungking. With this setback, Stilwell criticized Chiang Kai-shek for his reluctance to deploy his forces against the Japanese; Stilwell was recalled by Roosevelt. The relationship between the United States and China suffered from this event. "Stilwell's successors, due to his dogged achievements, would eventually win the struggle he began almost alone to comply with General Marshall's 1942 order to "support China."¹ But Stilwell, along with many other Americans was not particularly interested in the fate of Hong Kong.

As the tides of war turned in favor of the United States, President Truman published the Potsdam Declaration (with Chiang Kai-shek's approval), a demand for unconditional surrender of Japan. The Japanese made no response to the Declaration, and on August 6, 1945, an atomic bomb was dropped on Hiroshima. With still no response to the Potsdam Declaration from Japan, a second atomic bomb was dropped, this time on Nagasaki, on August 9, 1945. Whatever the effects of the atomic bombs, the fact is that on August 15, 1945, Emperor Hirohito went on the radio to call for an end to the Second World War in the Pacific.

¹Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 183.

D. POST WORLD WAR II

After the Japanese were defeated (14 August 1945), the surrender at Hong Kong had to be delayed until the arrival of the British Pacific Fleet, under Rear-Admiral Sir Cecil Harcourt, on the 30th of August. With the end of World War II, the first problem to be solved within Hong Kong was that of public services. Troops were used to restore law and order; food supplies were organized. The movement of Chinese troops to Kowloon, for transportation to Manchuria, caused the populace to be uneasy. On 1 May, 1946, Sir Mark Young assumed his position as governor, ended the military rule, and began the process of adapting the colony to a post-war world. No Americans were involved in the operation.

China still struggled with the civil war between Communist forces and Nationalist forces. (On November 1, 1942, the United States ended extraterritoriality with China. Great Britain ended their rights as well.) The Cairo Conference, in November 1943, had allowed Chiang Kai-shek to meet with President Roosevelt and Prime Minister Winston Churchill as a partner in the war with Japan. America still had high hopes for China becoming a great power and ally in balancing the power in East Asia between Russia and Japan. The United States promoted China into one of the five permanent seats on the Security Council of the United Nations.

The United States once again assisted the Nationalists in their struggle against the Communist forces of Mao Zedong; this included sending soldiers and marines of the United States to fight along side the Nationalists. It was at this point in time that many experts now say the United States should have left China. The Soviets and the Nationalist Republic of China signed a treaty of friendship in August of 1945, showing that the relationship between Russia and Mao was not a friendly one. The Russians had taken hundreds of millions of dollars worth of equipment from Manchuria and sent it home. And when the Soviet armies left Manchuria, large quantities of rifles and machine guns were turned over to the armies of Mao. The Communists wasted no time in taking control of the cities of Manchuria.

Mao and Chiang came together, at the request of the United States, to negotiate; it was the intention of the United States to bring the two forces together to fight the Soviet Red Army. Resolutions between Chiang and Mao were proposed; the goal was to bring about "(1) a new constitution

based on Sun Yat-sen's three-stage principles to introduce democratic government, (2) phase reductions of their armed services; and (3) truce teams comprised of equivalent KMT, CCP, and U.S. representations to root out truce violations as they might arise."¹

The negotiating process stalled and claims of "support for the Communists" by State Department personnel were made by the then Chinese Ambassador, Patrick J. Hurley, who was negotiating the plan; he resigned his post in frustration. President Truman sent retired General George C. Marshall to China to continue the negotiations. His mission was doomed to fail as Chiang advanced his troops against the Communists. Warfare broke out; inflation and starvation throughout China would lead to the eventual defeat of the Nationalists.

The United States, under President Truman, would continue to attempt to resolve the problems of China in favor of the Nationalist; equipment, arms and ammunition were provided by the United States. The China Aid Act of April 1948 provided \$400 million for the struggle, but this was not enough to sustain Chiang. The fighting would continue until Chiang Kai-shek resigned the presidency and withdrew to Taiwan. The Peoples's Republic of China was born after thirty-seven years of civil war in China. It is estimated that the United States, since V-J day, had spent more than three billion dollars in support of the Nationalist forces. The United States began a policy of nonrecognition of China that would last until 1979.

Again, it is to be noted that Britain and the United States went their separate ways. Britain recognized the government of the People's Republic of China in February of 1950, and, in an attempt to avoid conflicts between the British and Chinese troops, kept British troops away from the borders of Hong Kong. The British were concerned with Hong Kong and trade. The Americans were concerned by this time almost exclusively with the role of China in the Cold War. The United States did not care about Hong Kong, until it became the free world's best observation point for developments on mainland China.

¹Arthur Power Dudden, The American Pacific From the Old China Trade to the Present, (New York: Oxford University Press, 1992), 194.

In June of 1950, when North Korean Communists attacked the Republic of Korea, the United Nations intervened. There was much military activity in the colony; troops, some from Hong Kong, were moved into Korea; Chinese troops joined the North Korean fight. The United States made commitments to the Nationalist forces in Taiwan and placed an embargo on trade with China; a United Nations embargo followed. This embargo would greatly impact Hong Kong trade. With the Korean War, Hong Kong becomes increasingly important to the United States. It is a brand new factor in the cold war strategy.

The French in 1954, agreed to divide Indo-China into Laos, Cambodia and Vietnam. This impacted Hong Kong in that refugees were entering the colony to escape the Communists. "The population increased from an estimated 1,600,000, including 15,000 non-Chinese, at the end of 1945, to 'something over 2,500,000' in 1956."¹ The population strained the resources of the colony. The registration of the people of Hong Kong began in 1949 and the restriction to emigration began in 1953. The problems of over population and refugees dominated the post-war years for Hong Kong. Social welfare programs and the education system also became the focus of the government of Hong Kong. Public works projects were begun. Housing, a reservoir to supply the colony's water, a new runway for the airport, ferry terminals, a City Hall, a breakwater and reclamation for general industry were all undertaken.

Hong Kong trade began to diversify so as to become less dependant on China. Many Chinese moved from Shanghai to Hong Kong and invested their capital in the colony. The textile industry and other light industries grew within the colony. Raw materials were imported to support this. Commercial shipping and port facilities expanded to handle the changes within the colony. British markets were opened to Hong Kong goods through imperial preference and the dependence on China ended.

In the 1950s and 1960s, Mao tried to reform China. The speech, "Let a Hundred Flowers Blossom, Let a Hundred Schools of Thought Contend,"

¹G. B. Endacott, A History of Hong Kong, (London: Oxford University Press, Amen House, 1964) p. 305. This includes a reference to Dr. Edvard Hambro, The Problem of Chinese Refugees in Hong Kong, Leyden, 1955, p.27.

gave rise to free expression within China which result in criticism of the CCP; it was discontinued. The Great Leap Forward was developed; China experienced three years of economic crisis as a result (1960-1962). The Great Proletarian Cultural Revolution was proclaimed, by Mao, in 1966.

The dramatic upheaval that followed shook the country to its foundations. The Red Guards, consisting mostly of middle-school and university students, took to the streets and, brandishing the Little Red Book of Mao's sayings, attacked teachers, bureaucrats, intellectuals, scientists, technicians and many others accused of being "capitalist roaders." The newly established Cultural Revolution Group in the CCP Central Committee-whose most prominent member was Mao's wife, Jiang Qing-was the chief leader and instigator of the movement. The Communist party almost disintegrated as a national organization, with countless party members forced to undergo humiliating public self-criticism (Deng Xiaoping among them) and sent to prisons, or simply executed on the spot. . . The final resolution of the conflict came only after the deaths of Zhou Enlai and Mao in 1976.¹

The Cultural Revolution altered China's relationship with the United States and with the Soviet Union. (China's relationship with the Soviet Union, in 1960, was characterized by exchanges of denunciations between the two parties.) In 1965, China and the United States purposefully took measures to avoid confrontation on the issue of Vietnam. The United States promised American planes would try to avoid Chinese air space. Mao focused on domestic issues rather than the Americans who were fighting close to Chinese borders.

In 1972, President Richard Nixon visited China, and with that visit, "ended twenty years of confrontation and isolation between the United States and China."² In 1976, Hua Guofing was designated to succeed Mao, but it became apparent that Deng Xiaoping was the individual that had the

¹Robert H. Taylor, ed., Asia and the Pacific, Handbooks to the Modern World (New York: Facts On File Publications, 1991) vol.1, p.73.

²Harry Harding, A Fragile Relationship: The United States and China Since 1972, (Washington, DC: The Brookings Institute, 1992), 23.

power. In 1977, China embarked on a road to economic modernization, a road it has been following ever since. And this would indicate a new chapter in the story of Hong Kong, Sino-British relations and the interests of the United States.

III. INTERESTS OF THE U.S. AND U.S. CITIZENS IN HONG KONG

According to the State Department, American interests in Hong Kong include: (1) a smooth transition from British sovereignty to Chinese sovereignty, (2) continued protection of human rights in Hong Kong, (3) democratic development, and (4) strengthening the relationship between the United States and Hong Kong. But it is economic and commercial interest that drive every aspect of America's foreign policy toward Hong Kong today. It is with this interest that the discussion must begin.

A. ECONOMIC AND COMMERCIAL INTERESTS

With the growing importance of the Chinese economy in the world and the implications of a "Greater China" (to include Hong Kong and possibly Taiwan), economic and commercial interest in Hong Kong been the most important interest the United States has in the colony. An indication of just how important: in 1992, the two-way trade between the United States and Hong Kong was estimated to have exceeded \$18 billion.

Hong Kong is a major financial center for Asia. It is a free port imposing no tariffs on imports, except for duty on alcohol and some luxury goods. Hong Kong is seen as the capitalist gateway into China, with a potential market of over a billion people. Currently, the United States sells computers, telecommunications equipment, agricultural goods and food stuffs to Hong Kong. "It is the largest market in the world for American agricultural products on a per capita basis, and a major seller of textiles, toys, and consumer electronics."¹ Hong Kong ranks number 13 among trading partners of the United States.

The State Department reports that direct investment by the United States in Hong Kong is in excess of \$7 billion, and that investment is primarily in finance and trade. Over 250 American firms are regionally headquartered in Hong Kong. But the emphasis on Hong Kong is due almost entirely on the linkage between Hong Kong and the mainland. If that

¹A Report To Congress On Conditions In Hong Kong As Of March 31, 1993, by the State Department, as required by Sec. 301 of the United States - Hong Kong Policy Act of 1992.

linkage is broken, the United States still has an option of constructing new links in the form of direct trade and investments with the mainland.

Under the Joint Declaration, China should protect the economic and commercial interests of Hong Kong, by allowing the economic and commercial activities to remain autonomous after 1997 under the promise of "one country, two systems". There is a great fear, among many, that this promise will not be kept, and many Hong Kong firms have shifted their legal headquarters offshore, for that reason. One example of a company that has done this is Jardine Matheson, a very old and famous Hong Kong company.

The United States, in an attempt to protect interests in Hong Kong, has enacted the United States - Hong Kong Policy Act of 1992 (see section E). But United States' legislation cannot solve some of the problems that are already occurring in Hong Kong in the area of economics, for example, the construction of the new airport on a neighboring island.

The \$22 billion airport project for Hong Kong is being threatened, because China has refused to back the international contracts and loans that must be in place since the project will continue beyond 1997. (This is required under the Basic Law). It is said the Chinese are acting as if the airport project is an attempt by the British to loot the Hong Kong treasury before they leave. Many companies from the United States (Morgan Stanley, Bechtel and Morrison Knudsen) are involved in the project. Many British companies have won contracts as well; a British consortium got the contract to build a suspension bridge leading to the airport (the airport will be located on another island). Work is moving ahead on the airport project, even without the approval of the Chinese government. The site is being prepared for \$1.16 billion by a team that includes the American company of Morrison Knudsen and the Chinese company China Harbour Engineers. It is feared that the Chinese are increasingly skeptical about an airport initiative. When eventually a more efficient airport might be built on the mainland itself.

An interesting aspect of the airport saga is that the Chinese promised to sign an agreement approving the project if British Prime Minister John Major would visit Beijing; Major made the trip in 1991 and signed a memorandum of understanding with the Chinese, yet, the Chinese have not followed through with the agreement.

As world leaders watch the events in Hong Kong, many question the motives of the Chinese government. "The Chinese are undermining their credibility" for living up to agreements according to Winston Lord, former United States Ambassador to China and current Assistant Secretary of State for East Asia and the Pacific. There is already an uneasiness in Hong Kong, and this is not helping the situation.

Another important fact to note is that the Chinese have made allies in an unusual place: the businessmen of Hong Kong. Knowing well that the Chinese will control Hong Kong one day, the business elite, through the Business and Professionals Federation, seek new ways to get along with China. They have suggested that Governor Patten withdraw his pro-democracy proposals. According to the chairman of the group, Vincent Lo, "China will not sit back and do nothing. It is not acceptable, in our view, that Hong Kong has to be the victim of a major confrontation with China."¹ This attempt to get along with China does not surprise many given the future relationship between Hong Kong and Beijing authorities.

There is little doubt that American economics can play a positive role in Hong Kong's future growth and stability. But economic interests of the United States, as they pertain to the opening markets of China, are not tied to Hong Kong alone. China is opening up to foreign investments and the British colony of Hong Kong is no longer the only way into the country.

Most Favored Nation (MFN) for China must be renewed in July 1993. Although MFN for China is a separate issue from MFN for Hong Kong, there is little question that Hong Kong would suffer significantly if the renewal does not go through. And China has said they will not tolerate MFN being tied to any other issues (human rights, etc.). The United States can influence events in Hong Kong but should not use MFN for China to do this; it would not only harm the economy of China but would harm the economy of Hong Kong as well. When Governor Patten met with President Clinton on May 03, 1993, Patten urged the renewal of MFN for China without conditions. Some day the Americans might well strive for MFN treatment for themselves in the Chinese market.

¹Louis Kraar, "Storm Over Hong Kong," Fortune, 08 March, 1993, 99.

B. ASSURING A SMOOTH TRANSITION FROM BRITISH TO CHINESE SOVEREIGNTY

Certainly, it is in the best interest of the United States that there be a smooth transition for Hong Kong from British to Chinese sovereignty if, for no other reason, than economics: the colony is, after all, our 13th largest trading partner but our trade would suffer if the existing peaceful Hong Kong-China connection were to be disturbed.

In order for this smooth transition to transpire in 1997, certain events, according to William H. Overholt, must occur. "The central issues of Hong Kong's future concern the ability of both sides to implement a policy of 'one country, two systems': (1) neither side must subvert the other's political system; (2) China must actively support Hong Kong's autonomous capitalist economic system; and (3) Hong Kong must govern itself with economic efficiency."¹ These objectives must be achieved in an atmosphere of peace and harmony.

How can the United States help? In a world with a global economy, the United States must continue its policy of MFN and must not appear to meddle in the internal affairs of China. Tension between the two countries on the issue of Hong Kong already exists because the United States has enacted The United States - Hong Kong Policy Act of 1992. This attempt to put pressure on the Chinese and protect United States' interest in the colony after 1997 is righteously condemned in China as a blatant effort to limit China's right to absolutely sovereignty. The Chinese argue that their policy to Hong Kong is frankly no business of the United States.

C. PROTECTION OF HUMAN RIGHTS

The protection of human rights has long been dear to the citizens of the United States. Never has that been more apparent than it was in June 1989 when the world watched as a student demonstration in Tiananmen Square was violently suppressed by the Chinese military. The United States was outraged as the demonstration was crushed. Hundreds of pro-

¹William H. Overholt, "Hong Kong and China after 1997: The Real Issues," The China Challenge, 1991, 30-52.

democracy demonstrators were killed; widespread arrests and executions followed the event. China denied reports of any wrong doing. American lawmakers quickly enacted sanctions against China. Americans expressed their outrage in unprecedented numbers.

That spring and summer, over one million Hong Kong people marched in support of democracy, freedom, and human rights for China. Fear had motivated the Hong Kong people, many for the first time, into political action; a call for the protection of human rights and democracy for Hong Kong, after 1997, was heard from within the colony. Americans simply assumed that they and the people of Hong Kong were on the same wave length and would stay that way.

As the 1997 deadline approaches, uncertainty about a future under China has caused a wave of anxiety throughout Hong Kong. There has been an increase in immigration of the colonies' elite to countries like the United States, Canada, and Australia. Businesses have relocated their corporate headquarters in order to better protect their assets. Countries, like the United States, with substantial interests in the colony, have continuously voiced their opinions on the subject of protection of human rights in one international forum after another.

China, as a kind of spokesman of the third world, has been speaking on the subject, too, to make its position known. The following statements, recently made by key Chinese officials, illustrate the Chinese resentment against interference in Chinese practices and policies of human rights:

It is obviously one-sided and harmful to make irresponsible comments about the human rights situation in developing countries in disregard of the difference in historical background and cultural tradition as well as the actual conditions in these countries.¹

¹FBIS-Ch Sept. 24, 1992. p.3. Originally a Xinhua report in English of Foreign Minister Qian Qichen's address to the 47th session of the General Assembly.

For the people of developing countries, the right to subsistence and the right to development are undoubtedly the fundamental and the most important human rights of all.¹

At the Third Preparatory Meeting of the International Conference on Human Rights that was held in September, 1992 in Geneva, China said:

Asian countries proposed that the agenda should include such items as abiding by the principles of the UN Charter, and making all out efforts to rapidly wipe out racial discrimination, apartheid, foreign occupation and domination, any form of xenophobia, and other serious violations of human rights.²

. . . on how to appraise the degree of democracy and the general situation of human rights. Asian nations emphasized the indivisibility of citizens' economic, social, cultural and political rights. Nevertheless, some Western nations were opposed to such a view. . .

Asian nations maintained that each nations cultural, social and religious characteristics and traditions should be taken into full account when implementing principles on human rights. They also called for respect for a country's sovereignty and territorial integrity and non-interference in other countries' internal affairs, as well as avoiding double standards. Some Western nations again raised objections.³

Some Chinese added the following observations:

. . . unfair and unjust international political and economic order is jeopardizing the economic and social development of the developing countries, faced with hunger, disease, poverty, unemployment and illiteracy.⁴

¹FBIS-Ch Sept. 24, 1992. p.3. Originally a Xinhua report in English of Foreign Minister Qian Qichen's address to the 47th session of the General Assembly.

²FBIS September 25, 1992 p. 4. Beijing Central People's Radio September 23, 1992.

³FBIS September 25, 1992 p. 4. Beijing Central People's Radio September 23, 1992.

⁴FBIS September 15, 1992. p. 1. Xinhau in English September 14, 1992.

Splitting the human rights concept, with undue emphasis on civil and political rights while neglecting economic, social and cultural rights, is another obstacle to the enjoyment of human rights . . . ¹

While events in the international community are constantly changing and unrest is brewing throughout the world, some western politicians consider this a good opportunity to unify the world according to Western values. In fact, this world remains a diversified world with myriads of variations. All countries have their own historical traditions, cultural backgrounds, religious beliefs, ideologies and values. They are at different stages of development and have different social systems, economic patterns and development strategies. It is obviously unrealistic and impossible to impose a pattern on different countries. This world remains a multipolar world in which the economic development of North and South is unbalanced and beset by friction, competition and conflicts of interest. It is also apparently unrealistic and impossible for one or several large powers to dominate the world. Only when generally acknowledged principles are upheld can a new international order acceptable to all countries be established. These are the five principles of mutual nonaggression, noninterference in one another's internal affairs, equality and mutual benefit, and peaceful coexistence.²

It is obvious that the Chinese views on the subject of human rights differ drastically from those of the West. The vigorous championship of the Chinese views of human rights proves that the Chinese are learning how to 'play the game' of international politics and is seen as a positive sign for the country and its global relationships. The Chinese are determined to separate economic and trade issues from the human rights issues. The United States has threatened to tie the subject of human rights to renewal of Most Favored Nation (MFN) status of China. This effort to link MFN to human rights is completely unacceptable to the

¹FBIS September 15, 1992. p. 1. Xinhau in English September 14, 1992.

²FBIS-Ch January 15, 1992. p.2. Was originally an article by PRC Foreign Minister Qian Qichen, titled: "Unrest is Still Brewing Throughout the World" and was in Hong Kong's Tzu Ching on January 5, 1992.

Chinese. Keeping Chinese products out of the American market hurts exporters and manufacturers and all those that are benefiting from the free market reforms of China's economy. The linkage of human rights and trade is detrimental to all concerned and most of all it threatens serious damage to the Americans in Hong Kong.

D. DEMOCRATIC DEVELOPMENT

The United States fought for, and won its independence from the Great Britain in 1776. From the beginning, this country has identified with independence and democracy, and has supported countries with democratic forms of government and those fighting for democratic reform. To "strengthen and enlarge the common wealth of free nations that share a commitment to democracy and individual rights"¹ is listed as one of the national interests and objectives in the 1990s. America's support for democracies and democratic forms of governments has worked its way into its foreign policy for Asia and the rest of the world. At the recent Senate confirmation hearing for Assistant Secretary For East Asian and Pacific Affairs, Winston Lord said, of democracy :

Equally compelling is the need to perfect the American experiment in democracy. We must practice at home what we preach overseas. We can project to troubled countries a multi-ethnic society that reconciles the need for national purpose with the right of groups to be distinctive. As President Eisenhower once said, "Whatever America hopes to bring to pass in the world must first come to pass in the heart of America." There can be no greater contribution to our Asian policy than fostering domestic economic vigor and social cohesion in America. Our Asian friends recognize this. Progress at home will burnish our leadership credentials. It will make us competitive in the marketplace of goods and credible in the marketplace of values. It will help secure the resources needed for international action. And it will steady popular support without which our foreign policy founders. ²

¹National Military Strategy of the United States, January 1992, 5.

²Winston Lord, in statement before the Senate Foreign Relations Committee, Washington, DC,

The United States specifically lists "fostering the growth of democracy" as one of the security interests in Asia¹ What does China think about democracy? Some say China fears democracy. What is probably a little more accurate is that China does not worry about, fear or even think about any Western label for its government.

The British in Hong Kong have never been too concerned about democracy in their administration of the Crown Colony. After the Tiananmen Square massacre, a movement swelled within the colony calling for more democracy. After all, the people of Hong Kong enjoyed individual freedoms and rights under the British rule of law; the citizens were granted a certain amount of freedom of religion, movement, peaceful assembly and association as well as free speech and press. The organizations supporting democratic reform in Hong Kong failed to unite, and therefore, were without the financial backing and clout need to energize the movement. After that time, the momentum dwindled but the call for democracy was given a new lift by Governor Patten.

What does all this mean for Hong Kong? China did not promise Western style democracy to Hong Kong; what was promised was a "high degree of autonomy". Even the business elite of Hong Kong have not endorsed democratic reform for Hong Kong. It has been said that Hong Kong is just 'getting on with it' and not worrying about what tomorrow brings. At this point, Americans risk another clash with China on the issue of democracy. Americans naturally applaud when Governor Patten calls for more democracy. China has no intention of concerning itself with "more democracy" for Hong Kong, and this riles Americans. Neither the American media nor spokesman for the American government are inclined to overlook any opportunity to plug for more democracy; and every American speech or news comment only serves to raise the Chinese temperature.

March 31, 1993, US Department of State
Dispatch, Vol. 4, No. 14 (April 5, 1993) :217.

¹"A Strategic Framework for the Asian Pacific Rim," Report to Congress 1992, Department of Defense, 9.

E STRENGTHENING RELATIONS BETWEEN THE UNITED STATES AND HONG KONG

In an attempt to strengthen the relationship between America and Hong Kong, and to protect its interests in the colony, the United States enacted The United States - Hong Kong Policy Act of 1992. The bill, introduced by Senator Mitch McConnell, is the first time the United States has considered policy toward Hong Kong as a separate and distinct issue. The policy is designed to reflect the increased interests the United States has in Hong Kong. According to Senator McConnell:

The bill will lay out, for the first time, a comprehensive, coherent framework for formalizing our relationship with Hong Kong. The act, which is based on the Joint Declaration, addresses U.S. policy toward Hong Kong in five areas: bilateral ties, Hong Kong participation in multilateral organizations, commerce, transportation, and cultural and education.

... The U.S.-Hong Kong Policy Act encourages the administration, the Congress, and the private sector groups to begin to deepen existing relations and seek new relations with Hong Kong in these five areas.

... The act also ensures that Hong Kong status in U.S. law will not be changed solely as a result of reversion to Chinese sovereignty. . .

... The more the United States recognizes and respects the autonomy of Hong Kong while it remains under British rule, the less China will see such policies as an affront to PRC sovereignty after 1997.

... Finally, establishment of a clear policy will boost confidence in Hong Kong and stem emigration. It will show that the United States, the leader of the international community, is willing to support Hong Kong now and after 1997.¹

The congress was determined to have its say no matter how much it irritates the Chinese. The State Department issued a press release

¹"Hong Kong's Reversion to China and Implications for U.S. Policy," Hearing before the Subcommittee on Foreign Relations, United States Senate. One Hundred Second Congress, Second Session, April 2, 1992. (Washington, DC: U.S. Government Printing Office) 1992.

pointing out the conflicts inherent in the United States - Hong Kong Policy Act of 1992:

The Chinese maintain that Hong Kong is a matter between China and Britain before July 1, 1997. After that, it say, it will purely be China's internal affair. Beijing argues that U.S. adoption of domestic legislation on Hong Kong constitutes unjustified interference in China's internal affairs and violates universally acknowledged norms governing international relations.

The U.S. government has informed the PRC that the Hong Kong Policy Act is fully consistent with the spirit of the Joint Declaration. The intent of the Act is to make changes in U.S. law needed to deal with changes in Hong Kong's status in 1997. The Act aims to assist in the continuation of prosperity and confidence in Hong Kong by enabling the U.S. to respect Hong Kong's special status.¹

Critics of the United States-Hong Kong Policy Act of 1992 see this bill as an attempt by America to micromanage foreign policy and to legislate morality for another country. If taken at face value, the act could prove to be a confidence building tool slowing emigration and encouraging American investment within the colony. Unfortunately, the perceived interference by the United States into China's domestic affairs has primarily a negative impact on Hong Kong. It is cited as another example of excessive American interference in the internal affairs of China.

¹A Report To Congress On Conditions In Hong Kong As Of March 31, 1993, by the State Department, as required by Sec. 301 of the United States - Hong Kong Policy Act of 1992.

IV. RETROCESSION DEVELOPMENTS

A. JOINT DECLARATION

In 1979, the Labour Foreign Secretary under Prime Minister James Callaghan, Dr. David Owen, sent the Governor of Hong Kong, Murray MacLehose, to Beijing to discuss the future of the colony. The Chinese did not recognize MacLehose' position as they did not recognize the colonial status of Hong Kong. The Chinese leadership felt it was their place to take the initiative on the Hong Kong issue; two years later, the Chinese Premier, Hua Guo Feng, visited British Prime Minister Margaret Thatcher in London and the process of returning Hong Kong to Chinese sovereignty finally began.

Speculation as to the motives behind the start of negotiations lean toward the British ridding "themselves of political and defense commitments".¹ From within the colony, a resolution of the situation was sought in order to preserve civil order and to maintain financial stability.

With British Prime Minister Margaret Thatcher's visit to China, in 1982, came the answer to the main question: the end of British rule would come with the expiration of the lease on 30 June, 1997. In 1984, Great Britain and China negotiated the terms of and, in 1985, signed a "Joint Declaration". That document provided a timetable for the turnover of the colony. Additionally, it contained a pledge that the capitalist economy of Hong Kong and its social system would be preserved for fifty years (till 2047) under Chinese sovereignty. According to Michael Yahuda comments on the Joint Doctrine:

It has so far facilitated development of the territory. Yet it involved British acceptance of the vague and untested formula of 'one country, two systems' as a basis for a legal commitment to uphold in the future 'a high degree of autonomy' for a former colony under the authority of a communist regime which has an unenviable record of continually violating its own constitutional norms-as was to be shown again in the 1989 Tiananmen massacre less than five years later. . . Although the contrast in the negotiating styles of Britain and China has attracted some attention, little has been

¹Leonard Rayner, "Hong Kong - Prospects for Democracy," The Round Table, 1992, 229-235.

devoted to the extraordinary implications of the Joint Declaration of 1984: first, the Chinese communists entrusted the British to continue to administer Hong Kong and to have exclusive responsibility in preparing the territory for autonomy; and second, at Chinese insistence, Hong Kong representation was specifically excluded from the negotiating process, although by the terms of the negotiations the people of the territory would be developing representative institutions. But perhaps the most striking novelty of the negotiating process was the undertaking of these two countries of such different histories and political cultures to cooperate for thirteen years about delicate and uncertain matters as if oblivious to the record of volatility of the Chinese communist regime and to the responsibility of the radical change in the external environment.¹

Because the document was so ambiguous, there have been conflicting interpretations of the Joint Declaration by both the British and the Chinese from the very beginning. The document called for the writing of a constitution, by China, for the post-1997 government; this would become the Basic Law. China interpreted this to mean that it would write the rules for Hong Kong before 1997 and the Basic Law would then outline the way the system would be maintained until 2047. Britain would continue to be responsible for the administration of Hong Kong until the turnover in 1997. A Joint Liaison Group (JLG) was established to implement the declaration. The two governments were committed to a "smooth transfer of government in 1997". At the request of the Chinese, a Land Commission was established to monitor land sales and income distribution.

The British plan was for direct elections to a Legislative Council in a transition to democracy. Groups within Hong Kong even prepared to form political parties. China denounced these changes saying they were not consistent with the Joint Declaration; the British also claimed the Chinese were not honoring the Joint Declaration.

¹Michael Yahuda, "Hong Kong's future: Sino-British negotiations, perceptions, organization and political culture," International Affairs 69,2 (1993), 245-266. The text of the Joint Declaration is appended as Appendix A to this thesis.

Each side, could in good faith, say they were honoring the agreement. The British believed they had governed the colony in a democratic style and any move toward a democracy was justifiable within the parameters of the Joint Declaration. In preventing specific democratic reforms from occurring, the Chinese did not feel they had reneged on the terms of the agreement, after all, the commitment was to maintain the current system.

B. BASIC LAW

In 1986, a drafting committee was established to work on a mini-constitution for Hong Kong; there were to be a total of 59 members, 23 were to be from Hong Kong. A consultative committee of 180 members was to assist in the process. The first draft was published in 1988; in February of 1989, a second draft was released.

Although these drafts followed in general terms the requirements of the Joint Declaration, the prevailing constitution of Hong Kong was colonial and authoritarian in tone, even though in practice many of its executive powers were little used, or applied in a relatively tolerant fashion that might not be applied under the authority of the Chinese Communist party. In the absence of democratic institutions in Hong Kong, these had to be negotiated into the Basic Law. But conversely, since the British were committed to 'mirror-imaging' the Basic Law, democratic change within Hong Kong was limited to the starting point which the Basic Law provided for 1997. Indeed, by 1988 it was professed British policy to seek convergence with the Chinese proposals for the SAR in the hope that a 'through train' would conduct Hong Kong smoothly from British to Chinese sovereignty in 1997.¹

Arguments over the Basic Law resulted from the student demonstrations in Tiananmen Square and the demonstrations of support that followed in Hong Kong. Jiang Zemin, the General Secretary of the Party, on July 11, 1989, met with the Hong Kong Basic Law Drafting

¹Michael Yahuda, "Hong Kong's future: Sino-British negotiations, perceptions, organization and political culture," International Affairs 69,2 (1993), 245-266.

Committee (BLDC) and the Basic Law Consultative Committee (BLCC). He warned the Hong Kong people not to interfere with China, in other words, to refrain from acts which threaten the communist system of China. A tone had been set for Hong Kong, and their confidence in the "one country, two systems" plan China had promised them was shaken.

Consultation on the Basic Law was continued for three months per the Standing Committee of the National People's Congress indicating no willingness to revise the draft Basic Law that had been released in February 1989. It is important to remember, the Basic Law was drafted by the British and the Chinese; there was no input from the citizens of Hong Kong.

Following the promulgation of the Basic Law, no one realistically had any doubt that one day soon the Chinese would again control Hong Kong. The document, once signed, started the process of Chinese control which would climax in 1997. The initial reaction of the citizens of Hong Kong was one of resignation and relief, but there was a demonstration by some 2,000 students who burned copies of the Basic Law.

The Basic Law was approved by the National People's Congress of China in March 1990. Few changes had been made to the draft; twenty, not eighteen, of the first post-1997 legislature would be directly elected. Also, the two-track voting system had been modified; the end result for Hong Kong was not going to be democracy. Polls, taken after the Basic Law was approved, showed sharp differences of opinion regarding the Basic Law and its provisions for an autonomous Hong Kong.

An important aspect of the document was a ban on "subversion" that the Chinese wrote into the document as a result of the Tiananmen Square student protests. This raised fears that China would renege on the range of freedoms Hong Kong needed to maintain its capitalist economy. The government of Hong Kong neither debated the nonsubversion rule publicly nor formed a consensus on the range of behaviors that were considered permissible. Instead, Hong Kong seemed to adjust itself to a quiet acceptance to the hand that had been dealt. Governor David Wilson was looked upon as a lackey, bowing submissively to the fiat of Beijing.

C. GOVERNOR PATTEN'S ATTEMPTED MODIFICATIONS

Once the Basic Law was signed, the Chinese pushed for more control of Hong Kong. On the contrary, the British Prime Minister, John Major, appointed a new governor for Hong Kong, Christopher Patten, a former chairman of the Conservative party. Patten began openly proposing a faster pace for democratic changes for Hong Kong, as with the selection of members of the local legislature. (Governor Patten found some loopholes in the Basic Law and began using them to his advantage. An example of this is with the selection of a legislator by the leaders of the various interest groups; Patten planned to extend the vote to every worker within the industry.) Beijing did not take this well. Suggestions came from China that the Basic Law could be "scattered to the wind" if the British governor continued to push for democratic reform. It was rumored that China might even attempt to gain control of Hong Kong before 1997. There was, and still is (mid-1993) support for many of Patten's proposals from within Hong Kong. Many citizens feel as if they were left out of the negotiations between the British and the Chinese and now want to be heard.

As the British continue to negotiate with the Chinese over specific details on the turnover of Hong Kong, few immediate material British interests are involved. (The economic benefits the British receive from Hong Kong are concentrated in a few trading companies and individuals. In Hong Kong, British goods compete on the free market with goods from other countries. Some funds are received as pensions for retired Hong Kong civil servants living in Britain. There are also dividends and profits for British shareholders in Hong Kong firms.)

What is to be gained by British efforts to effect a long term change in Hong Kong before 1997 is that if the turnover is successful and Hong Kong continues to operate its capitalist economy under China, the British will continue to enjoy the feeling of goodwill in the Asian theater, and specifically, the Asian market. If things do not go well, the standing of the British in the region will fall. All of this has immediate effect on American interests in Hong Kong. British and Americans are in the same boat in Hong Kong. What the Chinese do to harm the British will also harm the Americans. But a common hostility to Chinese repression measures will not dampen British and American commercial competition. As the

new Chinese regime goes into effect, the respective rivals will compete like cats and dogs for their own commercial advantage.

As of the writing of this thesis (May 1993), negotiations over the Governor Patten's proposal to further democratize the territory, by increasing the number of elected seats open to direct voting in the 1994-95 election, was still causing problems between Britain and China. Qian Qichen, was quoted by the China Daily as saying, in reference to the ongoing negotiations: "The job in Hong Kong now is to implement agreements reached between China and Britain and not to launch 'political reforms'".¹

¹ "Chinese President Zemin Warns Britain on Previous. . ." United Press International, Beijing, May 18, 1993.

V. CHINA IN HONG KONG - ALTERNATIVE SCENARIOS AFTER 1997

What will happen in Hong Kong after 01 July, 1997? The events could unfold in any number of ways: China could allow Hong Kong to continue on its free market way and allow the Special Administrative Region of Hong Kong to manage the dynamic economy that it has developed. Or, China could attempt to influence the internal running of Hong Kong, going against the provisions of the Basic Law, and micromanage the region right out of its place in the world's global economy. Or Hong Kong could be weighed down by the rampant corruption and the requirement to buy political influence that exists now within China. China might even prosper by allowing Hong Kong to do what Hong Kong does best: to make money through intelligent, long term investments in the PRC and throughout the world. Or, despite the rapid growth of China's economy and the recent commitment of the Chinese leadership to continue economic growth within China, the ideological and political principles that China adheres to could cause a slowing down of the economic drive that exists in Hong Kong. China is in the driver's seat and it will be China that makes all the decisions.

The most likely scenarios foreseen in this discussion are supported with information from A Fragile Relationship: The United States and China Since 1972, by Harry Harding. In his book recent, Harding outlines five possible scenarios for the future of the relationship between the United States and China. Three are described here in order to "paint a picture" of what the future may hold for the future relationship between China, to include Hong Kong, and the United States.

A. DANGER OF CLOSING TO THE OUTSIDE WORLD-WHAT DOES IT MEAN TO THE UNITED STATES?

The first scenario, a worst case scenario, illustrates the possibility of China closing to the outside world :

The realization that Hong Kong's autonomy will be limited, and that the exercise of local democracy will be restricted, has produced a serious crisis of confidence in the future of Hong Kong, especially among younger professionals, managers, and intellectuals. This uncertainty has been reflected in a mounting outflow of human

capital and financial resources from the territory. Moreover, as the 1997 deadline approaches, Hong Kong is likely to experience more difficulties. The brain drain and the flight of capital will increase. The morale of the civil service could well decline, especially in such sensitive sectors as the police, and corruption and influence-peddling could grow. Inflation could surge if large amounts of labor and capital leave the territory, and the growth rate could slow if wages and interest rates rise as a result. If the economy and political situation deteriorated sufficiently, there could be serious social unrest in Hong Kong, before or after the British left the territory. At some point, instability in Hong Kong could trigger direct Chinese military intervention. . .

But as the crisis of confidence in Hong Kong began to affect American businesses operating in the territory, Hong Kong began to attract greater attention in the United States. . . Greater deterioration of the situation in Hong Kong would therefore have a deleterious impact on Sino-American relations, conceivably as severe as a confrontation between Taiwan and the mainland. Any use of Chinese military force against Hong Kong, even to quell serious social unrest, would most likely be seen as a serious violation of human rights in the territory and an occasion for another round of American economic and diplomatic sanctions against China. . . In so delicate a period, the imposition of such punitive measures would evoke a harsh Chinese response and would almost certainly trigger a grave confrontation between China and the United States.¹

This pessimistic scenario is considered unlikely. If it were to occur, Hong Kong would suffer immeasurably. One of the most serious effects would be the continuation of the brain drain, currently seen as one of the most serious problems facing Hong Kong. As some of the young, educated elite leave Hong Kong for Canada, Australia, and the United States, the concern arises that social stability within the colony will be undermined. (It is not the number of people that are choosing to leave the colony, it is the quality that is of concern.) According to Wong Siu-lun, there are three reasons for this: "First, it is said that the brain drain will lead to a depletion of the "functional core" of the economy. Second, it is felt that the widespread desire to leave will engender a doomsday

¹Harry Harding, A Fragile Relationship: The United States and China Since 1972. (Washington, DC: The Brookings Institute, 1992), 317-318.

syndrome and result in a state of anomie. Third, it is alleged that desertion by the elites will create a crisis of legitimacy and an erosion of the moral basis of authority."¹

Wong Siu-lun points out the "yuppie" refugees "exit" as a means to express dissatisfaction and that the people of Hong Kong are currently experiencing a sense of political powerlessness and feel they have little or no influence on their government.

Kerry Dumbaugh and Michael Ipson write: "The emigration issue largely stems from the lack of confidence about China, its intentions, and its prospects for social, economic, and policy stability, particularly since the June 1989 crackdown and its repressive aftermath throughout the country. That crackdown, and the subsequent hardening of China's position on political issues, has made many fearful that Chinese leaders either will not honor or will interpret selectively their commitments to Hong Kong's "high degree of autonomy" after 1997."²

The Chinese leadership does not fear the dooms-day consequences of the emigration of the Hong Kong elite. The best and brightest will still remain at home in Hong Kong. For every one that leaves, there is a vacancy that will be filled by a migrant from the China mainland that is eager to take his place.

B. Chinese Reform

The second scenario is a more optimistic, but still unlikely, scenario. Harding titles it: "A Renewed Partnership in China's Reform;" the situation is one :

¹Wong Siu-lun, "Emigration and Stability in Hong Kong," *Asian Survey* Vol. XXXII, No. 10 (10 October, 1992):918-933.

²Kerry Dumbaugh and Michael Ipson, "The United States and Hong Kong's Future: Promoting Stability and Growth," National Committee. China Policy Series, No. Three, June 1990. This was a summary report of a conference convened by The National Committee on U.S.-China Relations, Inc. with the support of The Henry Luce Foundation and The Hotung Institute of International Studies, held March 29-30, 1990 in Hong Kong.

. . . that seemed to be emerging in the mid-1980's. The prerequisite for such a development would be the renewal of both economic reform and political liberalization, coupled with a more sympathetic reassessment of the mass demonstrations that produced the Tiananmen crisis. On that basis, the remaining U.S. sanctions imposed on Peking after the Tiananmen crisis would be lifted. The U.S. government would extend enthusiastic moral and material support for China's domestic development programs by relaxing controls over the export of advanced technology to Peking, and even extending a modest economic and technical assistance program. American business would increase investment in China, trade would continue to grow, and academic and cultural exchanges between the two countries would flourish. China would show renewed interest not only in American capital and technology, but also in Western values and institutions. And, while not forming a strategic alignment against a common enemy, Peking and Washington might assume more cooperative postures on various global and regional issues.¹

In this situation, Hong Kong would prosper. As the markets in China expanded, imports and exports in and out of China through Hong Kong would grow. Confidence in the PRC would rise and foreign investment would certainly increase, not only in Hong Kong but throughout China as well. Hong Kong people would enjoy the freedom to continue to do what they do best: make lots of money; all would benefit.

C. A Strained Relationship

Harry Harding concludes that the most likely scenario for the relationship between China and the United States would be that of a:

. . . strained relationship, characterized by a complex mixture of conflict, competition, and cooperation. In contrast to U.S.-China relations in the mid-1980's, there would be no overriding sense of common purpose, whether that be a strategic alignment against a mutual adversary or a shared commitment to Chinese reform. But despite strained relations there would also be less chance of

¹Harry Harding, A Fragile Relationship: The United States and China Since 1972, (Washington, DC: The Brookings Institute, 1992), 307.

military conflict, more intense economic interaction, and more frequent diplomatic cooperation on regional and global issues than would occur in an outright confrontation.¹

This being the likely scenario, Hong Kong will probably be able to continue to grow and expand economically. Problems will occur but will be settled in discussions with the Chinese government. 'Growing pains' under China and uncertainty about the future will cause some to leave the colony (as is occurring now). But, in the end, Hong Kong would remain the role model for every market-oriented city in China and join madly in the pursuit of profit.

¹Harry Harding, A Fragile Relationship: The United States and China Since 1972, (Washington, DC: The Brookings Institute, 1992), 319.

VI. SUMMARY/CONCLUSION

The importance of the American consulate General in Hong Kong increased by leaps and bounds. Our defense attache in Hong Kong became our most important diplomatic post on the China coast. And as mainland China gradually opened its doors to economic reform and the outside world, Hong Kong was the sole avenue to approach and understanding. The old commercial importance of Hong Kong to the British was magnified a hundred fold by its political importance to the United States and the free world.

Now the cold war is over, and we have come full circle. Hong Kong will retain much of its prosperity, and it holds promise for continuing much of its entrepot trade to China. But it is no longer the sole avenue of approach to China. Americans can operate in Manchuria, in Beijing and China's oil fields of the Far West, in Shanghai, Canton and all the Special Economic Zones. Americans can have their representatives and exchange students all over the vast expanses of Chinese territory. We no longer need Hong Kong in the way we needed it in the days of the cold war.

What happens to Hong Kong is now up to the Chinese. The old British regime is allowed fifty years for an acceptable transition and whatever happens, one can expect the same degree of initiative and enterprise on the part of adventurous Americans who will seek their fame and fortune in Hong Kong or elsewhere in China. They will have to take their chances against their competition, and insist only on most favored nation and equality of commercial opportunity as they enjoyed in the days before the late and unlamented cold war.

This thesis has shown the development of American interests in Hong Kong and suggests that with the ending of the cold war new policies will have to be adapted for the protection and promotion of those interests.

Originally, Hong Kong was ceded to the British as a prize in the Opium War. It was developed less as a political colony than as an entrepot for British trade with the Chinese Empire. Americans shared the benefits of foreign trade and always insisted on equality of commercial opportunity or most favored nation status in the matter of all trade between China and the outside world. At first, foreign trade did not

amount to much in dollars and cents and the major share always went to the British traders.

Hong Kong was important to the British. Of Hong Kong, Chinese journalist Tsang Ki-fan said, "This is the only Chinese society that for a brief span of 100 years, lived through an ideal never realized at any time in the history of Chinese society - a time when no man had to live in fear of the midnight knock on the door."¹ But Hong Kong was not that important to the Americans. The headquarters for American trade with China were in Manila and Shanghai, while Hong Kong was the headquarters for the British competition.

American diplomacy centered in Beijing. Few Americans liked Hong Kong or shared the sentimental attachments between Britain and Hong Kong. British and Americans together suffered the barbs of anti-imperialism in China and the growing resentment of the Chinese nationalist against the unequal treaties. British and Americans together felt the sting of Japanese aggression in World War II.

It was only with the advent of the cold war that Hong Kong became a monumental common interest of Britain, the United States, and the entire free world. Trade was no longer the great asset of Hong Kong. Hong Kong was the listening post for Communist China, the sole point d'appui for the free World to the Asian component of the communist conspiracy to rule the world. Hong Kong assumed a defense or security or intelligence-gathering importance that it had never known.

¹William McGurn, *Perfidious Albion: The Abandonment of Hong Kong*, 1997, (Washington, DC: Ethics and Public Policy Center, 1991), p. 134.

APPENDIX A

JOINT DECLARATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE QUESTION OF HONG KONG

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.

2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.

3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:

(1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's

Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.

(2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

(3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

(4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.

(5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.

(6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.

(7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.

(8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.

(9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.

(10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organizations. The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.

(11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.

(12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its cooperation in this connection.

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex 11 to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declaration and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 1984 in the English and Chinese languages, both texts being equally authentic.

(Signed)

For the Government of
the United Kingdom of
Great Britain and
Northern Ireland

(Signed)

For the Government of
the People's Republic of China

ANNEX I
**ELABORATION BY THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA
OF ITS BASIC POLICIES REGARDING
HONG KONG**

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Hong Kong as set out in paragraph 3 of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong as follows:

I

The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of specific conditions." In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practiced in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested

with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

11

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e., the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.

III

After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practiced in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of office, or for misbehavior, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependents, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region

Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organizations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.

VII

The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems

previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong dollar as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.

VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping

register and issue related certificates under its own legislation in the name of "Hong Kong, China".

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

IX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions

and economic interests of the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may:

- renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;

- negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and

- negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in the paragraph.

The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to:

- negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;

- issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;

- designate such airlines under the above Air Service Agreements and provisional arrangements; and

- issue permits to foreign airlines for services other than those to, from or through the mainland of China.

X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

XI

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the

organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which Hong Kong participates in one capacity or another. The Central People's government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:

- all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;
- all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall

be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of traveling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.

ANNEX II

SINO-BRITISH JOINT LIAISON GROUP

1. In furtherance of their common aim and in order to ensure a smooth transfer of government in 1997, the Government of the People's Republic of China and the Government of the United Kingdom have agreed to continue their discussions in a friendly spirit and to develop the cooperative relationship which already exists between the two Governments over Hong Kong with a view to the effective implementation of the Joint Declaration.

2. In order to meet the requirements for liaison, consultation and the exchange of information, the two Governments have agreed to set up a Joint Liaison Group.

3. The functions of the Joint Liaison Group shall be:

(a) to conduct consultations on the implementation of the Joint Declaration;

(b) to discuss matters relating to the smooth transfer of government in 1997;

(c) to exchange information and conduct consultations on such subjects as may be agreed by the two sides.

Matters on which there is disagreement in the Joint Liaison Group shall be referred to the two Governments for solution through consultations.

4. Matters for consideration during the first half of the period between the establishment of the Joint Liaison Group and 1 July 1997 shall include:

(a) action to be taken by the two Governments to enable the Hong Kong Special Administrative Region to maintain its economic relations as a separate customs territory, and in particular to ensure the maintenance of Hong Kong's participation in the General Agreement on Tariffs and Trade, the Multifibre Arrangement and other international arrangements; and

(b) action to be taken by the two Governments to ensure the continued application of international rights and obligations affecting Hong Kong.

5. The two Governments have agreed that in the second half of the period between the establishment of the Joint Liaison Group and 1 July 1997 there will be need for closer cooperation, which will therefore be intensified during that period. Matters for consideration during this second period shall include:

(a) procedures to be adopted for the smooth transition in 1997;

(b) action to assist the Hong Kong Special Administrative Region to maintain and develop economic and cultural relations and conclude agreements on these matters with states, regions and relevant international organisations.

6. The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role over that administration. The members and supporting staff of the Joint Liaison Group shall only conduct activities within the scope of the functions of the Joint Liaison Group.

7. Each side shall designate a senior representative, who shall be of Ambassadorial rank, and four other members of the group. Each side may send up to 20 supporting staff.

8. The Joint Liaison Group shall be established on the entry into force of the Joint Declaration. From 1 July 1988 the Joint Liaison Group shall have its principal base in Hong Kong. The Joint Liaison Group shall continue its work until 1 January 2000.

9. The Joint Liaison Group shall meet in Beijing, London and Hong Kong. It shall meet at least once in each of the three locations in each year. The venue for each meeting shall be agreed between the two sides.

10. Members of the Joint Liaison Group shall enjoy diplomatic privileges and immunities as appropriate when in the three locations. Proceedings of the Joint Liaison Group shall remain confidential unless otherwise agreed between the two sides.

11. The Joint Liaison Group may by agreement between the two sides decide to set up specialist sub-groups to deal with particular subjects requiring expert assistance.

12. Meetings of the Joint Liaison Group and sub-groups may be attended by experts other than the members of the Joint Liaison Group. Each side shall determine the composition of its delegation to particular meetings of the Joint Liaison Group or sub-group in accordance with the subjects to be discussed and the venue chosen.

13. The working procedures of the Joint Liaison Group shall be discussed and decided upon by the two sides within the guidelines laid down in this Annex.

ANNEX III

LAND LEASES

The Government of the United Kingdom and the Government of the People's Republic of China have agreed that, with effect from the entry into force of the Joint Declaration, land leases in Hong Kong and other related matters shall be dealt with in accordance with the following provisions:

1. All leases of land granted or decided upon before the entry into force of the Joint Declaration and those granted thereafter in accordance with paragraphs 2 or 3 of this Annex, and which extend beyond 30 June 1997, and all rights in relation to such leases shall continue to be recognised and protected under the law of the Hong Kong Special Administrative Region.

2. All leases of land granted by the British Hong Kong Government not containing a right of renewal that expire before 30 June 1997, except short term tenancies and leases for special purposes, may be extended if the lessee so wishes for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent shall be charged from the date of extension equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, the property is granted to, a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line. Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the Hong Kong Special Administrative Region.

3. From the entry into force of the Joint Declaration until 30 June 1997, new leases of land may be granted by the British Hong Kong Government for terms expiring not later than 30 June 2047. Such leases shall be granted at a premium and nominal rental until 30 June 1997, after which date they shall not require payment of an additional premium but an annual rent equivalent to 3 per cent of the rateable value of the

property at that date, adjusted in step with changes in the rateable value thereafter, shall be charged.

4. The total amount of new land to be granted under paragraph 3 of this Annex shall be limited to 50 hectares a year (excluding land to be granted to the Hong Kong Housing Authority for public rental housing) from the entry into force of the Joint Declaration until 30 June 1997.

5. Modifications of the conditions specified in leases granted by the British Hong Kong Government may continue to be granted before 1 July 1997 at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.

6. From the entry into force of the Joint Declaration until 30 June 1997, premium income obtained by the British Hong Kong Government from land transactions shall, after deduction of the average cost of land production, be shared equally between the British Hong Kong Government and the future Hong Kong Special Administrative Region Government. All the income obtained by the British Hong Kong Government, including the amount of the above-mentioned deduction, shall be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong. The Hong Kong Special Administrative Region Government's share of the premium income shall be deposited in banks incorporated in Hong Kong and shall not be drawn on except for the financing of land development and public works in Hong Kong in accordance with the provisions of paragraph 7 (d) of this Annex.

7. A Land Commission shall be established in Hong Kong immediately upon the entry into force of the Joint Declaration. The Land Commission shall be composed of an equal number of officials designated respectively by the Government of the United Kingdom and the Government of the People's Republic of China together with necessary supporting staff. The officials of the two sides shall be responsible to their respective governments. The Land Commission shall be dissolved on 30 June 1997.

The terms of reference of the Land Commission shall be:

(a) to conduct consultations on the implementation of this Annex:

(b) to monitor observance of the limit specified in paragraph 4 of this Annex, the amount of land granted to the Hong Kong Housing Authority for public rental housing, and the division and use of premium income referred to in paragraph 6 of this Annex;

(c) to consider and decide on proposals from the British Hong Kong Government for increasing the limit referred to in paragraph 4 of this Annex;

(d) to examine proposals for drawing on the Hong Kong Special Administrative Region Government's share of premium income referred to in paragraph 6 of this Annex and to make recommendations to the Chinese side for decision.

Matters on which there is disagreement in the Land Commission shall be referred to the Government of the United Kingdom and Government of the People's Republic of China for decision.

8. Specific details regarding the establishment of the Land Commission shall be finalised separately by the two sides through consultations.

MEMORANDA

(To Be Exchanged Between the Two Sides)

MEMORANDUM

In connection with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the question of Hong Kong to be signed this day, the Government of the United Kingdom declares that, subject to the completion of the necessary amendments to the relevant United Kingdom legislation:

(a) All persons who on 30 June 1997 are, by virtue of a connection with Hong Kong, British Dependent Territories citizens (BDTCs) under the law in force in the United Kingdom will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which, without conferring the right of abode in the United Kingdom, will entitle them to continue to use passports issued by the Government of the United Kingdom. This status will be acquired by such persons only if they hold or are included in such a British passport issued before 1 July 1997, except that eligible persons born on or after 1 January 1997 but before 1 July 1997 may obtain or be included in such a passport up to 31 December 1997.

(b) No person will acquire BDTC status on or after 1 July 1997 by virtue of a connection with Hong Kong. No person born on or after 1 July 1997 will acquire the status referred to as being appropriate in sub-paragraph (a).

(c) United Kingdom consular officials in the Hong Kong Special Administrative Region and elsewhere may renew and replace passports of persons mentioned in sub-paragraph (a) and may also issue them to persons, born before 1 July 1997 of such persons, who had previously been included in the passport of their parent.

(d) Those who have obtained or been included in passports issued by the Government of the United Kingdom under subparagraphs (a) and (c) will be entitled to receive, upon request, British consular services and protection when in third countries.

MEMORANDUM

The Government of the People's Republic of China has received the memorandum from the Government of the United Kingdom of Great Britain and Northern Ireland dated 1984.

Under the Nationality Law of the People's Republic of China, all Hong Kong Chinese compatriots, whether they are holders of the "British Dependent Territories citizens' Passport" or not, are Chinese nationals.

Taking account of the historical background of Hong Kong and its realities, the competent authorities of the Government of the People's Republic of China will, with effect from 1 July 1997, permit Chinese nationals in Hong Kong who were previously called "British Dependent Territories citizens" to use travel documents issued by the Government of the United Kingdom for the purpose of travelling to other states and regions.

The above Chinese nationals will not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above-mentioned British travel documents.

APPENDIX B

106 STAT. 1448

PUBLIC LAW 102-383--OCT. 5, 1992

Public Law 102-383 102d Congress

An Act

Oct. 5, 1992

To set forth the policy of the United States with respect to Hong Kong, and for other purposes.

[S.1731]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Hong Kong Policy Act of 1992".

SEC. 2. FINDINGS AND DECLARATIONS.

The Congress makes the following findings and declarations:

(1) The Congress recognizes that under the 1984 Sino-British Joint Declaration:

(A) The People's Republic of China and the United Kingdom of Great Britain and Northern Ireland have agreed that the People's Republic of China will resume the exercise of sovereignty over Hong Kong on July 1, 1997. Until that time, the United Kingdom will be responsible for the administration of Hong Kong.

(B) The Hong Kong Special Administrative Region of the People's Republic of China, beginning on July 1, 1997, will continue to enjoy a high degree of autonomy on all matters other than defense and foreign affairs.

(C) There is provision for implementation of a "one country, two systems" policy, under which Hong Kong will retain its current lifestyle and legal, social, and economic systems until at least the year 2047.

(D) The legislature of the Hong Kong Special Administrative Region will be constituted by elections, and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong, shall remain in force.

(E) Provision is made for the continuation in force of agreements implemented as of June 30, 1997, and for the ability of the Hong Kong Special Administrative Region to conclude new agreements either on its

own or with the assistance of the Government of the People's Republic of China.

(2) The Congress declares its wish to see full implementation of the provisions of the Joint Declaration.

(3) The President has announced his support for the policies and decisions reflected in the Joint Declaration.

(4) Hong Kong plays an important role in today's regional and world economy. This role is reflected in strong economic, cultural, and other ties with the United States that give the United States a strong interest in the continued vitality, prosperity, and stability of Hong Kong.

(5) Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997.

(6) The human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong. A fully successful transition in the exercise of sovereignty over Hong Kong must safeguard human rights in and of themselves. Human rights also serve as a basis for Hong Kong's continued economic prosperity.

SEC. 3. DEFINITIONS.

For purposes of this Act-

(1) the term "Hong Kong" means, prior to July 1, 1997, the British Dependent Territory of Hong Kong, and on and after July 1, 1997, the Hong Kong Special Administrative Region of the People's Republic of China;

(2) the term "Joint Declaration" means the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, done at Beijing on December 19, 1984; and

(3) the term "laws of the United States" means provisions of law enacted by the Congress.

TITLE I--POLICY

SEC. 101. BILATERAL TIES BETWEEN THE UNITED STATES AND HONG KONG.

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, should be the policy of the United States with respect to its bilateral relationship with Hong Kong:

(1) The United States should play an active role, before, on, and after July 1, 1997, in maintaining Hong Kong's confidence and prosperity, Hong Kong's role as an international financial center, and the mutually beneficial ties between the people of the United States and the people of Hong Kong.

(2) The United States should actively seek to establish and expand direct bilateral ties and agreements with Hong Kong in economic, trade, financial, monetary, aviation, shipping, communications, tourism, cultural, sport, and other appropriate areas.

(3) The United States should seek to maintain, after June 30, 1997, the United States consulate-general in Hong Kong, together with other official and semi-official organizations, such as the United States Information Agency American Library.

(4) The United States should invite Hong Kong to maintain, after June 30, 1997, its official and semi-official missions in the United States, such as the

Hong Kong Economic & Trade Office, the Office of the Hong Kong Trade Development Council, and the Hong Kong Tourist Association. The United States should invite Hong Kong to open and maintain other official or semi-official missions to represent Hong Kong in those areas in which Hong Kong is entitled to maintain relations on its own, including economic, trade, financial, monetary, aviation, shipping, communications, tourism, cultural, and sport areas.

(5) The United States should recognize passports and travel documents issued after June 30, 1997, by the Hong Kong Special Administrative Region.

(6) The resumption by the People's Republic of China of the exercise of sovereignty over Hong Kong after June 30, 1997, should not affect treatment of Hong Kong residents who apply for visas to visit or reside permanently in the United States, so long as such treatment is consistent with the Immigration and Nationality Act.

SEC. 102. PARTICIPATION IN MULTILATERAL ORGANIZATIONS, RIGHTS UNDER INTERNATIONAL AGREEMENTS, AND TRADE STATUS.

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, should be the policy of the United States with respect to Hong Kong after June 30, 1997:

(1) The United States should support Hong Kong's participation in all appropriate multilateral conferences, agreements, and organizations in which Hong Kong is eligible to participate.

(2) The United States should continue to fulfill its obligations to Hong Kong under international agreements, so long as Hong Kong reciprocates, regardless of whether the People's Republic of China is a party to the particular international agreement, unless and until such obligations are modified or terminated in accordance with law.

(3) The United States should respect Hong Kong's status as a separate customs territory, and as a contracting party to the General Agreement on Tariffs and Trade, whether or not the People's Republic of China participates in the latter organization.

SEC. 103. COMMERCE BETWEEN THE UNITED STATES AND HONG KONG.

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, are and should continue after June 30, 1997, to be the policy of the United States with respect to commerce between the United States and Hong Kong:

(1) The United States should seek to maintain and expand economic and trade relations with Hong Kong and should continue to treat Hong Kong as a separate territory in economic and trade matters, such as import quotas and certificates of origin.

(2) The United States should continue to negotiate directly with Hong Kong to conclude bilateral economic agreements.

(3) The United States should continue to treat Hong Kong as a territory which is fully autonomous from the United Kingdom and, after June 30, 1997, should treat Hong Kong as a territory which is fully autonomous from the People's Republic of China with respect to economic and trade matters.

(4) The United States should continue to grant the products of Hong Kong nondiscriminatory trade treatment (commonly referred to as 'most-favored-nation status') by virtue of Hong Kong's membership in the General Agreement on Tariffs and Trade.

(5) The United States should recognize certificates of origin for manufactured goods issued by the Hong Kong Special Administrative Region.

(6) The United States should continue to allow the United States dollar to be freely exchanged with the Hong Kong dollar.

(7) United States businesses should be encouraged to continue to operate in Hong Kong, in accordance with applicable United States and Hong Kong law.

(8) The United States should continue to support access by Hong Kong to sensitive technologies controlled under the agreement of the Coordinating Committee for Multilateral Export Controls (commonly referred to as "COCOM") for so long as the United States is satisfied that such technologies are protected from improper use or export.

(9) The United States should encourage Hong Kong to continue its efforts to develop a framework which provides adequate protection for intellectual property rights.

(10) The United States should negotiate a bilateral investment treaty directly with Hong Kong, in consultation with the Government of the People's Republic of China.

(11) The change in the exercise of sovereignty over Hong Kong should not affect ownership in any property, tangible or intangible, held in the United States by any Hong Kong person.

SEC. 104. TRANSPORTATION.

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, should be the policy of the United States after June 30, 1997, with respect to transportation from Hong Kong:

(1) Recognizing Hong Kong's position as an international transport center, the United States should continue to recognize ships and airplanes registered in Hong Kong and should negotiate air service agreements directly with Hong Kong.

(2) The United States should continue to recognize ships registered by Hong Kong.

(3) United States commercial ships, in accordance with applicable United States and Hong Kong law, should remain free to port in Hong Kong.

(4) The United States should continue to recognize airplanes registered by Hong Kong in accordance with applicable laws of the People's Republic of China.

(5) The United States should recognize licenses issued by the Hong Kong to Hong Kong airlines.

(6) The United States should recognize certificates issued by the Hong Kong to United States air carriers for air service involving travel to, from, or through Hong Kong which does not involve travel to, from, or through other parts of the People's Republic of China.

(7) The United States should negotiate at the appropriate time directly with the Hong Kong Special Administrative Region, acting under authorization from the Government of the People's Republic of China, to renew or amend all air service agreements existing on June 30, 1997, and to conclude new air service agreements affecting all flights to, from, or through the Hong Kong Special Administrative Region which

do not involve travel to, from, or through other parts of the People's Republic of China.

(8) The United States should make every effort to ensure that the negotiations described in paragraph (7) lead to procompetitive air service agreements.

SEC. 105. CULTURAL AND EDUCATIONAL EXCHANGES,

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, are and should continue after June 30, 1997, to be the policy of the United States with respect to cultural and educational exchanges with Hong Kong:

(1) The United States should seek to maintain and expand United States-Hong Kong relations and exchanges in culture, education, science, and academic research. The United States should encourage American participation in bilateral exchanges with Hong Kong, both official and unofficial.

(2) The United States should actively seek to further United States-Hong Kong cultural relations and promote bilateral exchanges, including the negotiating and concluding of appropriate agreements in these matters.

(3) Hong Kong should be accorded separate status as a full partner under the Fulbright Academic Exchange Program (apart from the United Kingdom before July 1, 1997, and apart from the People's Republic of China thereafter), with the continuation or establishment of a Fulbright Commission or functionally equivalent mechanism-

(4) The United States should actively encourage Hong Kong residents to visit the United States on nonimmigrant visas for such purposes as business, tourism, education, and scientific and academic research, in accordance with applicable United States and Hong Kong laws.

(5) Upon the request of the Legislative Council of Hong Kong, the Librarian of Congress, acting through the Congressional Research Service, should seek to expand educational and informational ties with the Council.

TITLE II--THE STATUS OF HONG KONG IN UNITED STATES LAW

SEC. 201. CONTINUED APPLICATION OF UNITED STATES LAW.

(a) IN GENERAL.--Notwithstanding any change in the exercise of sovereignty over Hong Kong, the laws of the United States shall continue to apply with respect to Hong Kong, on and after July 1, 1997, in the same manner as the laws of the United States were applied with respect to Hong Kong before such date unless otherwise expressly provided by law or by Executive' order under section 202.

(b) INTERNATIONAL AGREEMENTS. — For all purposes, including actions in any court in the United States, the Congress approves the continuation in force on and after July 1, 1997, of all treaties and other international agreements, including multilateral conventions, entered into before such date between the United States and Hong Kong, or entered into before such date between the United States and the United Kingdom and applied to Hong Kong, unless or until terminated in accordance with law. If in carrying out this title, the President determines that Hong Kong is not legally

competent to carry out its obligations under any such treaty or other international agreement, or that the continuation of Hong Kong's obligations or rights under any such treaty or other international agreement is not appropriate under the circumstances, such determination shall be reported to the Congress in accordance with section 301.

SEC. 202. PRESIDENTIAL ORDER.

(a) PRESIDENTIAL DETERMINATION.— On or after July 1, 1997, whenever the President determines that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People's Republic of China, the President may issue an Executive order suspending the application of section 201(a) to such law or provision of law.

(b) FACTOR FOR CONSIDERATION. — In making a determination under subsection (a) with respect to the application of a law of the United States, or any provision thereof, to Hong Kong, the President should consider the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong.

(c) PUBLICATION IN FEDERAL REGISTER. — Any Executive order issued under subsection (a) shall be published in the Federal Register and shall specify the law or provision of law affected by the order.

(d) TERMINATION OF SUSPENSION. — An Executive order issued under subsection (a) may be terminated by the President with respect to a particular law or provision of law whenever the President determines that Hong Kong has regained sufficient autonomy to justify different treatment under the law or provision of law in question. Notice of any such termination shall be published in the Federal Register.

SEC. 203. RULES AND REGULATIONS.

The President is authorized to prescribe such rules and regulations as the President may deem appropriate to carry out this Act.

SEC. 204. CONSULTATION WITH CONGRESS.

In carrying out this title, the President shall consult appropriately with the Congress.

TITLE III--REPORTING PROVISIONS

SEC. 301. REPORTING REQUIREMENT.

Not later than March 31, 1993, March 31, 1995, March 31, 1997, March 31, 1998, March 31, 1999, and March 31, 2000, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on conditions in Hong Kong of interest to the United States. This report shall cover (in the case of the initial report) the period since the date of enactment of this Act or (in the case of subsequent reports) the period since the most recent report pursuant to this section and shall describe

(1) significant developments in United States relations with Hong Kong, including a description of agreements that have entered into force between the United States and Hong Kong;

(2) other matters, including developments related to the change in the exercise of sovereignty over Hong Kong, affecting United States interests in Hong Kong or United States relations with Hong Kong;

(3) the nature and extent of United States-Hong Kong cultural, education, scientific, and academic exchanges, both official and unofficial;

(4) the laws of the United States with respect to which the application of section 201(a) has been suspended pursuant to section 202(a) or with respect to which such a suspension has been terminated pursuant to section 202(d), and the reasons for the suspension or termination, as the case may be;

(5) treaties and other international agreements with respect to which the President has made a determination described in the last sentence of section 201(b), and the reasons for each such determination;

(6) significant problems in cooperation between Hong Kong and the United States in the area of export controls;

(7) the development of democratic institutions in Hong Kong; and

(8) the nature and extent of Hong Kong's participation in multilateral forums.

SEC. 302. SEPARATE PART OF COUNTRY REPORTS.

Whenever a report is transmitted to the Congress on a country-by-country basis there shall be included in such report, where applicable, a separate subreport on Hong Kong under the heading of the state that exercises sovereignty over Hong Kong. The reports to which this section applies include the reports transmitted under-

(1) sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (relating to human rights);

(2) section 181 of the Trade Act of 1974 (relating to trade barriers); and

(3) section 2202 of the Export Enhancement Act of 1988 (relating to economic policy and trade practices).

Approved October 5, 1992.

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CONGRESSIONAL RECORD, Vol. 138 (1992):

May 21, considered and passed Senate.

Aug. 1, considered and passed House, amended.

Sept. 17, Senate concurred in House amendments.

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